NOT YET SCHEDULED FOR ORAL ARGUMENT
No. 16-1328 & 16-1396

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION
Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner

ON PETITION FOR REVIEW AND CROSS-PETITION FOR ENFORCEMENT OF ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT DEFERRED APPENDIX

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CASE NOS. 16-1328, 16-1396

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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

November 7, 2016

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, DC 20001-2866

Re: *Pennsylvania State Correction Officers Association v. NLRB*
D.C. Cir. No. 16-1328
Board Case Nos. 04-CA-037648, 04-CA-037649, and 04-CA-037652

Dear Mr. Langer:

I am filing electronically a copy of the certified list of the contents of the agency record in this case.

Very truly yours,

Linda Dreeben

Linda Dreeben
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Encls.
cc: Michael McAuliffe Miller, Esq.
Edward R. Noonan, Esq.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PENNSYLVANIA STATE CORRECTION OFFICERS ASSOCIATION	)	
Petitioner	)	No. 16-1328
v.	)	Board Case Nos. 04-CA-037648, 04-CA-037649 and 04-CA-037652
NATIONAL LABOR RELATIONS BOARD	)	
Respondent	)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all papers and documents that constitute the record before the Board in Pennsylvania State Corrections Officers Association, Case Nos. 04-CA-037648, 04-CA-037649, and 04-CA-037652.

Gary Shinners

Gary W. Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

November 7, 2016

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PENNSYLVANIA STATE CORRECTION OFFICERS ASSOCIATION	)	
Petitioner	)	No. 16-1328
v.	)	Board Case Nos. 04-CA-037648, 04-CA-037649 and 04-CA-037652
NATIONAL LABOR RELATIONS BOARD	)	
Respondent	)	

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that the foregoing document will be served on all parties or their counsel of record through the appellate CM/ECF system.

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, DC 20570

Dated at Washington, D.C.
this 7th day of November 2016

JD–11–11
Harrisburg, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

Cases 4-CA-37648
4-CA-37649
4-CA-37652

BUSINESS AGENTS REPRESENTING
STATE UNION EMPLOYEES ASSOCIATON

Henry R. Protas, Esq., of Philadelphia, PA,
for the General Counsel.
Richardson Todd Eagen, Esq., of Harrisburg, PA,
for the Respondent.

DECISION

Statement of the Case

ROBERT A. GIANNASI, Administrative Law Judge: This case was tried in Philadelphia, Pennsylvania on January 26 and 27, 2010. The complaint, as amended, alleges that Respondent (PSCOA) violated Section 8(a)(5) and (1) of the Act by failing to give effect to, and thereafter repudiating, a collective bargaining agreement between it and the Charging Party Union (the Union or BARSUEA). The amended complaint also alleges that Respondent violated Section 8(a)(5) and (1) by discharging employees represented by the Union without prior notice to the Union and without affording it an opportunity to bargain concerning the discharges and their effects; and by failing to provide, or, as further amended at the hearing, unreasonably delaying in providing, relevant information to the Union. The Respondent filed an answer denying the essential allegations in the complaint.

After the conclusion of the trial, the Acting General Counsel and the Respondent submitted briefs, which I have read and considered. Based on the entire record in this case, including the testimony of the witnesses, and my observation of their demeanor, I make the following

Findings of Fact

I. Jurisdiction

Respondent, an unincorporated Pennsylvania association with an office in Harrisburg, Pennsylvania, represents employees in bargaining units within the Commonwealth of Pennsylvania. In a representative 1-year period, Respondent received dues and fees in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly outside the

Commonwealth. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

The Facts

Background and Contested Election for Leadership of Respondent

Since June 2001, Respondent has represented some 11,000 correctional officers at 28 facilities in Pennsylvania's prison system. It is led by a 13-member executive board, including a president and other officers. And it operates under a written constitution that sets forth the responsibilities and duties of its officers and governing executive board. Tr. 22, GC Exh. 2. Respondent's headquarters are located in Harrisburg, where its president and other officers and employees maintain offices.

In May 2009, Ron Pinto, Respondent's eastern regional vice president and a member of its executive board, announced that he was a candidate for the office of president of Respondent in an election that would be held to fill the position in June 2010. The incumbent president, Donald McNany, who had been in office since August 2002, also announced that he was running for reelection. For the last several years, Pinto and his allies were a minority on the executive board, consistently outvoted by McNany and his supporters. Tr. 49-50.

A mail ballot election to select Respondent's officers and executive board was scheduled for June 2010. Although there were three slates of candidates, the real contest was between McNany, and his mostly incumbent slate, and Pinto, whose slate included some incumbents, but was regarded as the insurgent group. The ballots were mailed to the membership in late May and completed ballots were counted on June 25, 2010, at the offices of the American Arbitration Association in Philadelphia. Tr. 19, 51-52. Pinto received a majority of the votes for president, and some candidates on his slate were also elected. But some of the other positions required a runoff election because no candidate had received a majority. R Exh. 1, Tr. 26. The runoff election was held on August 17, 2010. Tr. 161. After the runoff election, the Pinto slate controlled all of the 13 executive board positions.

After the June 25 announcement of the vote results for president, there was confusion as to when Pinto was going to take office and when McNany would leave office. McNany, who lives in Butler, some 230 miles from Harrisburg, moved out of the president's office in Harrisburg on June 29. On that date, Pinto moved into the office. However, in some respects, McNany continued to act as president and some of the incumbent officers and board members continued in office until the results of the runoff election were announced a month later. In addition, the Elections Committee, which apparently supervised the election, sought a manual recount of the election results, further delaying an orderly transition. In support of his effort to clarify the situation, Pinto filed a lawsuit to certify the election results and determine when exactly he could take office. On July 15, 2010, Judge Andrew Dowling of the Court of Common Pleas for Dauphin County, issued a memorandum opinion and order providing, inter alia, that Pinto and four other elected officers and executive board members be certified as having won their positions effective July 8, 2010. GC Exh. 7 & 8. Later that day, Pinto announced that he would be sworn in as president on July 20; he was in fact sworn in on July 20 at Respondent's headquarters in Harrisburg.

The Union Wins Representation Rights for Respondent's Employees and Concludes an Agreement with McNany

On June 25, 2010, the Union filed an election petition with the Board's regional office in Philadelphia seeking to represent Respondent's roughly 20 business agents and staff employees. Tr. 24, 85, GC Exh. 3.[1] The petition was faxed to the regional office late in the day on June 24 by Shawn Hood, the Union's president and a business agent for Respondent. Hood had been a supporter of the loser in the presidential election, Donald McNany, and was present in Philadelphia when the vote count was announced on June 25. Hood had indicated on the election petition that the Respondent's representative was Ron Pinto so it was served on Pinto. Since Pinto had not yet taken office when the petition was served on him, on June 28, he walked across the hall to McNany's office and hand delivered the petition to McNany. Tr. 14-15.

On July 1, 2010, the Respondent and the Union entered into a stipulated election agreement, approved by the region, setting an election for July 12, 2010, in the following unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards and supervisors.

GC Exh. 4, Tr. 26-27. The election was held as scheduled and the Union won. On July 21, 2010, the Board certified the Union as the official bargaining representative of the Respondent's employees. GC Exh. 6.

Between the election and the Board's certification, McNany, on behalf of Respondent, and Hood, on behalf of the Union, engaged in three negotiating sessions, the last of which was to go over the language of and sign a final collective bargaining agreement. At the last session, on July 19, McNany and Hood signed the agreement, which had a 5 year term and contained new and generous severance and other benefits. Tr. 33-35, 59, 60-63, GC Exh. 9. McNany and Hood met in western Pennsylvania, where they both lived, not at Respondent's Harrisburg offices. Tr. 69-70. Nor did McNany consult Respondent's executive board or Pinto on any matter involving the Union's representation rights, the negotiations, or the collective bargaining agreement he and Hood signed. Tr. 54-60. McNany testified that, at the end of July, he submitted a copy of the collective bargaining agreement to Sam Brezler, the outgoing secretary of Respondent. Brezler was retiring and had not run for reelection; he was still in office, awaiting the selection of his successor, who would be chosen in the runoff election on August 17, 2010. Tr. 38-39, 72.

The Union's Information Request

On July 20, 2010, the Union's secretary-treasurer, Patricia Hurd, prepared a letter asking Respondent to provide the names and addresses of the unit employees. Hurd, who, as one of Respondent's business agents, had an office at Respondent's Harrisburg headquarters, placed a copy of the letter in McNany's mailbox at headquarters. But, because Pinto was being sworn in as president that day, she also placed a copy, along with a covering note, in Pinto's mailbox at headquarters. Tr. 140-142, GC Exh. 11, 12.

Hurd received no response to her July 20 request so she sent another request, dated August 16, 2010, to Jason Bloom, Respondent's western regional vice president, asking for the

[1] At that time, Respondent employed 13 business agents and 7 clerical employees.

same information she had requested the month before. GC Exh. 13, Tr. 144-145. The Union received no reply to this letter, but, on November 9, 2010, after the initial complaint issued in this case, Respondent's lawyer did provide the requested information to the Union. R Exh. 11; Tr. 205, 146-147. Pinto testified that he was unaware of the July 20 request, and, although he was aware of the August 16 request, he did not answer that request immediately because he was seeking evidence of the Union's certification, which he did not confirm until August 23. Tr. 216-217. Although the complaint simply alleges that the information was not provided, at the hearing, counsel for the Acting General Counsel effectively amended the complaint on this issue and now alleges that the Respondent unreasonably delayed providing the information. Tr. 142-143.

Respondent's New Regime Discharges Some Employees and Refuses to Acknowledge the July 19 Bargaining Agreement

According to Jason Bloom, who was reelected to Respondent's executive board on the Pinto slate as western regional vice-president in June 2010, the Pinto slate's platform on Respondent's business agents and employees was essentially one word, "change." Tr. 226-227. In accordance with that view, on July 17, 2010, Bloom sent a letter to all 13 business agents of Respondent asking each of them to submit a letter of interest to be considered for a continued business agent position by the end of the day on July 20. The letter stated that those who were not interested in remaining as business agents should return Respondent's property in their possession and that those who wanted to remain would be scheduled for interviews. R Exh. 7; Tr. 228-229. All but one indicated an intent to remain. Tr. 229. Bloom conducted interviews in the first 2 weeks of August. On August 20, 2010, seven of the business agents were notified that they had been terminated and that they should make arrangements to return to their positions as correctional officers. GC Exh. 14. Subsequently, the terminations of two of the business agents, those of Robert Smith and Larry Blackwell, were rescinded and they were retained by Respondent. Tr. 232.[2]

One other employee was discharged by Respondent after the Pinto team took office. She was Sonya Corish, a staff employee, who carried the job description of lung and heart clerk. She was terminated on August 18 (Tr. 232-234).

On August 23, 2010, the Union filed grievances with the Respondent alleging that it had violated the July 19 collective bargaining agreement by "terminating employees without just cause," failing to pay them "the negotiated severance and unused leave," and failing to bid the vacant positions. GC Exh. 15.

On August 27, 2010, Respondent, through its lawyer, sent the Union a letter in response to the grievances. The letter stated that the Respondent had just recently learned of the existence of the Union and its July 19 collective bargaining agreement. The letter also stated that the agreement was void because McNany had no authority to sign the agreement on behalf of the Respondent since he had been voted out of office and the agreement had not been

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[2] As indicated in the termination letters, the Respondent's business agents were on leave of absence from their positions as corrections officers with the Commonwealth of Pennsylvania. Indeed, since January of 2007, they were paid a salary by the Commonwealth, which was reimbursed by Respondent. So when they were terminated, the business agents returned to their jobs as corrections officers. Likewise, an outgoing officer of Respondent, such as McNany, who was defeated for reelection, was able to return to his position as a corrections officer. McNany did indeed return to his position as a corrections officer in August of 2010.

approved by Respondent's executive board, as required by Respondent's constitution. GC Exh. 16.

On January 3, 2011, Respondent entered into a new collective bargaining agreement with the Union. That agreement, which runs for a term of 1 year and dispenses with the lucrative severance and other benefits in the July 19 agreement, was signed by President Pinto and a representative of the Union. R Exh. 10. Unlike the July 19 agreement, the new agreement was approved by Respondent's executive board. Tr. 204-205.

Discussion and Analysis

The complaint presents three basic questions: (1) Did the Respondent violate Section 8(a)(5) and (1) of the Act by failing to give effect to, and repudiating, the July 19 collective bargaining agreement negotiated and signed by McNany and Hood; (2) Did Respondent violate the Act by, unilaterally and without giving prior notice to the Union, discharging employees in August 2010, and failing to bargain over the discharges and their effect; and (3) Did Respondent unreasonably delay providing information to the Union in response to its information request. Respondent contests the validity of the July 19 collective bargaining agreement, but does not contest the Union's representative status. Thus, the complaint allegations must be considered in that light.

Failing to Give Effect to and Repudiating the July 19 Bargaining Agreement

The Acting General Counsel's allegation that Respondent unlawfully failed to give effect to and repudiated the July 19 collective bargaining agreement turns on whether McNany had the authority to negotiate and execute the agreement. I agree with the Respondent that McNany had no such authority.

First of all, when McNany negotiated and signed the agreement, he was the defeated former president of Respondent. The vote count announced on June 25 not only showed that Pinto had received a majority of the votes cast for that position, but that McNany was not even a close second. He trailed Pinto by over 1000 votes, out of the some 4500 votes cast for three presidential candidates. R Exh. 1. Although there was some confusion as to exactly when the new president would take office, that was a technicality eventually resolved by a state court judge, who ruled, on July 15, that Pinto should be certified as having won the presidency as of July 8. Actually, McNany had physically abandoned his office in Harrisburg on June 29, and Pinto moved into that office on the same day. McNany had retreated to his home in Butler, Pennsylvania, 230 miles away from Respondent's headquarters in Harrisburg. Nor did McNany seek, or receive, any specific authority to negotiate or sign an agreement from either the executive board or the newly elected president. In these circumstances, I find that McNany had no actual authority to negotiate or sign the July 19 bargaining agreement.

Even if McNany could, by some stretch of the imagination, still be considered president of Respondent when he negotiated and signed the July 19 agreement, he did not have the authority, under Respondent's constitution, to bind Respondent without the approval of Respondent's executive board, which he never sought or received. At the outset, the July 19 agreement committed Respondent to wages and benefits well in excess of the $5000 limit, beyond which executive board approval was required. Tr. 60-63. Contrary to McNany's testimony, the absence of any provision in the constitution governing collective bargaining for Respondent's employees does not give him the authority to conclude such agreement in excess of the $5000 limit. Even though the constitution is silent on the authority over bargaining agreements, the constitution does give the executive board, not the president, authority over

financial commitments and personnel and benefits policies that are typically covered by bargaining agreements. See GC Exh. 2, pp. 9-11, Tr. 60-66. The executive board is also empowered to enter into agreements necessary to effectuate its purposes and objectives. GC Exh. 2, p. 10. The record contains documentary evidence showing that the executive board regularly approved agreements, financial commitments and personnel policies in accordance with its constitutional authority. See Tr. 240-264, and accompanying exhibits. Indeed, the "governing authority" of Respondent resides in the executive board and the president simply has the responsibility to enforce and carry out "the policies established" by the executive board. GC Exh. 2, p. 4 and p. 9. Nor, contrary to McNany's testimony, does the president have the sole authority to construe or interpret the constitution. That responsibility may initially fall upon the president, but the constitution clearly states that the president's authority is "subject to the approval of the executive board." Tr. 68, GC Exh. 2, p. 5-6. Thus, the ultimate authority to commit Respondent to a collective bargaining agreement rests not with its president, but with its executive board.

Nor did McNany have apparent authority to bind Respondent to a collective bargaining agreement. Apparent authority "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question." *Corner Furniture Discount Center, Inc.,* 339 NLRB 1122, 1122 (2003). "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that his conduct is likely to create such belief." Id., cited with approval in *Mastec Direct TV*, 356 NLRB No. 110, slip op. 1-2 (2011). Neither of these situations is present here. Contrary to the Acting General Counsel's assertion in his brief (Br. 33), the Respondent's new leadership gave no signals that McNany was acting in its interests. Quite to the contrary, it vigorously fought against McNany's attempt to remain in office after his election defeat, even to the point of filing a lawsuit to uphold the election results. There was thus no manifestation by anyone from Respondent, aside from McNany, its purported agent, to Hood that would provide a reasonable basis for him, or anyone else, to believe that McNany had the apparent authority to negotiate and conclude a collective bargaining agreement on behalf of Respondent. See also *300 Exhibit Services & Events, Inc.*, 356 NLRB No. 66, slip op. 4-5 (2010).[3]

Indeed, it appears that Hood and McNany tried to keep their negotiations secret in an effort to conclude an agreement before Respondent's newly elected leadership took office. The agreement, as noted, was signed 1 day before Pinto was sworn in as president. But to rule that McNany was authorized to act on July 19, but not on July 20, would exalt form over substance. Both Hood and McNany knew that McNany had no legitimacy to act on behalf of Respondent at this time. They knew McNany had lost the election as early as June 25. Indeed, Hood himself had named Pinto as Respondent's representative when he filed the election petition before the Union was even selected as bargaining representative. Moreover, a judge had directed that Pinto be certified as the winner of the election as of July 8. And it was generally announced and known throughout the membership on July 15 that Pinto would be sworn in on July 20. But McNany and Hood carried on sham negotiations in an effort, I believe, to give a semblance of

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[3] There is testimony that Hood asked McNany, at one point during the negotiations, whether McNany needed to get anyone else involved and McNany replied in the negative. That statement does not establish apparent authority. In fact, it supports the notion that Hood knew he was on shaky ground in dealing with McNany. In any event, it is well settled under general agency principles that the statements of a purported agent cannot establish the existence of an agency relationship. *Karavos Campania Naviera S.A. v. Atlantica Export Corp.,* 588 F.2d 1, 11 (2nd Cir. 1978), citing authorities.

legitimacy to the greater benefits, including severance benefits, that the July 19 agreement gave to business agents like Hood, who probably read the handwriting on the wall that he might be ousted by the new regime. Hood had supported McNany in the presidential election and he and McNany colluded to give Hood a questionable one-time payment of over $40,000 shortly before McNany left office, supposedly for a past inequity in pay. Indeed, the check to Hood was issued the day before the election results for Respondent's officers and executive board were announced. See Tr. 270-292 and accompanying exhibits. The relationship between Hood and McNany was not at arms length and it infected the whole bargaining process that led to the signing of the July 19 agreement. This provides additional support for my view that McNany had no authority, actual or apparent, to commit the Respondent to a 5-year collective bargaining agreement that gave unusually generous benefits to business agents like Hood.[4]

In sum, McNany had no authority to enter into the July 19 collective bargaining agreement. Thus, that agreement has no legitimacy. It follows that Respondent did not violate the Act when it refused to give the agreement any effect and when it repudiated the agreement. I shall therefore dismiss those allegations in the complaint.[5]

The Discharge of Business Agents and a Clerical Employee

The complaint also alleges that Respondent violated its bargaining obligation by discharging employees represented by the Union on August 20, 2010, without giving prior notice to the Union, and by failing to bargain about the discharges and their effects. It is settled that an employer violates Section 8(a)(5) and (1) of the Act by unilaterally changing employee wages, hours and other terms and conditions of employment—mandatory subjects of bargaining—without first providing their bargaining representative prior notice and opportunity to bargain over those changes. *NLRB v. Katz, 369* U.S. 736 (1962). Termination of employment has long been considered a mandatory subject of bargaining, requiring bargaining over discharges after they have occurred. *Ryder Distribution Resources,* 302 NLRB 76, 90 (1991). But the prior notice rule does not automatically apply before discharges actually occur. The Board has held that, where an employer has in place pre-disciplinary policies that limit discretion, and applies those policies, there is no requirement that the employer bargain before each employee is disciplined, although there may be such a requirement after the discipline is imposed. See *Fresno Bee*, 337 NLRB 1161, 1186-1187 (2002).[6]

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[4] For example, the July 19 agreement commits Respondent to pay 13 business agents, including Hood, salaries of over $70,000 each for 5 years, provides for a $5,000 per month credit card authorization and $100,000 travel and life insurance for each agent, and provides for a severance package to each agent that amounts to 2 months salary for every year of service. For someone like Hood, that would net him over $70,000 in severance pay. Tr. 60-63.

[5] In support of his position, the Acting General Counsel cites (Br. 27 n. 17, 31) *Teamsters Local 575*, 259 NLRB 344 (1981). But that case is distinguishable. In *Teamsters*, unlike here, the issue was whether the employer's former leadership unlawfully assisted the clerical union, which obtained bargaining rights and later negotiated and signed a bargaining agreement with the employer. Moreover, unlike in this case, in *Teamsters*, the outgoing official who signed the bargaining agreement on behalf of the employer did so before he was voted out of office and he secured an opinion from counsel that he was not required to obtain the approval of the executive board.

[6] In *Alan Ritchey, Inc.*, 354 NLRB No. 79 (2009), a two-member panel of the Board cited *Fresno Bee* with approval and observed, at fn. 11, that *Fresno Bee*, which found no violation, was not irreconcilable with *Washoe Medical Center, Inc.*, 337 NLRB 202 (2001), a case finding a violation.

Contrary to the Acting General Counsel's assertion that the Union was not given prior notice of the discharge of Respondent's business agents, the record shows that such notice was given. On July 17, all of Respondent's 13 business agents were sent a letter asking them to submit a letter of interest to retain their jobs. The letter stated that those who expressed an interest in keeping their jobs would be interviewed. The clear implication was that continued employment depended on a successful interview. This should have put all business agents on notice that they might be terminated. Since this was the entire unit of business agents, such notice was tantamount to notice to the Union. Among those receiving the July 17 letter were the Union's president and its secretary-treasurer. Yet the Union made no request to bargain prior to the interviews or the possible terminations. In these circumstances, I find that the Union had adequate notice of the impending terminations and its failure to request bargaining permitted Respondent to carry out the termination decisions implicit in the July 17 notices unilaterally. Accordingly, the complaint is dismissed insofar as it alleges a violation with respect to the discharge of the business agents on August 20, 2010, without giving the Union prior notice or opportunity to bargain.

The discharge of clerical employee Sonya Corish is a different matter. She was not a business agent so she did not receive a copy of the July 17 notice. Indeed, neither she nor the Union received prior notice that she might be discharged. However, the Respondent interposes another defense to the complaint, which has particular application to Corish's situation. Respondent contends, contrary to the testimony of former President McNany, who insisted all of Respondent's employees were at-will employees, that the employees were covered by a predisciplinary policy that severely limited Respondent's discretion. The existence of such a policy, Respondent further contends, relieved it of any advance bargaining obligation, at least as to Corish's termination, under *Fresno Bee*, cited above.[7]

In support of its contention, Respondent refers to a policy statement issued to all of Respondent's executive officers by former President McNany on May 12, 2003. The statement pointed out that, at a May 7, 2003 executive board meeting, "we discussed and will implement the following disciplinary process:

1. Counseling session—Verbal, with notation of same in supervisory file.
2. Letter of reprimand—Copy to individual and supervisory file.
3. Unpaid suspension—Length of suspension will by determined by the offense.
4. Termination"

The policy statement concluded that "[b]y following this procedure, we will be able to establish just cause for any and all discipline imposed." R Exh. 3. This policy statement was placed in Respondent's regularly maintained policy booklet that contained many other personnel policies that had been approved by the executive board. Tr. 241-244.

The problem with Respondent's position is that, when it discharged Corish, it did not apply the above disciplinary policies. It summarily discharged her for incompetency. It did not consider counseling, reprimand or suspension before discharging Corish. Tr. 166-168. In these circumstances, I find that Respondent utilized virtually complete discretion when it discharged Corish. Since Corish was represented by the Union and the discharge obviously affected

[7] Respondent also raises this as an alternative defense to the allegation involving the business agents. But I do not reach the issue with respect to the business agents because, in their case, there was adequate prior notice before the discharges were effectuated, thus relieving Respondent of the requirement to bargain with the Union before effectuating the discharges.

working conditions, I find that Respondent could not discharge her without providing prior notice and an opportunity to bargain to the Union. At the very least, had the Union been given prior notice, it could have insisted that Respondent adhere to its disciplinary policies when considering Corish's discharge. Ironically, Respondent is in the unusual, and, indeed, inconsistent, position of urging the existence of disciplinary policies as a defense to the violation alleged, but not following those very policies when it unilaterally discharged the individual. In these circumstances, I find that Respondent violated Section 8(a)(5) and (1) of the Act by discharging Corish without bargaining with the Union over both its decision to discharge her and the effects of that decision.

There is one remaining question: Was the Respondent required to bargain with the Union over the effects of the decision to discharge the business agents, even though there was no obligation to bargain prior to the decision because adequate notice was given to the Union? It is clear that the Union did not specifically ask to bargain either over the decision or its effects. Ordinarily that would end the matter. But the Union did file a grievance, after the August 20 discharge of the business agents, alleging that Respondent had violated the July 19 bargaining agreement by terminating employees without just cause. The July 19 bargaining agreement was, of course, not a valid agreement. But the grievance over the discharges essentially amounts to a request to bargain over the effects of the decision to discharge the business agents. Surely, an incumbent union may file a grievance, which essentially amounts to a request to bargain, even in the absence of a valid collective bargaining agreement. I do not believe that the Union and the employees it represents should be penalized for the Union's having based its grievance on the void bargaining agreement. Had the Union known that it could not rely on the agreement and its grievance procedure to protect the rights of its members, it surely would have requested bargaining over the effects of the discharge decisions. I will therefore treat the grievance filing as a request by the Union to bargain over the effects of the decision to discharge the business agents. Respondent clearly failed to bargain over the effects of the discharge decision. Accordingly, I find that Respondent violated Section 8(a)(5) and (1) by failing to bargain over the effects of the decision to discharge the business agents. See *Ryder Distribution Resources*, above, 302 NLRB at 90.

Although Respondent need not bargain over the decision to discharge the business agents, it is required to bargain over its effects. I understand that the business agents returned to their former jobs as corrections officers. Their losses thus may be minimal. But there may be severance pay and other accrued, but unpaid, benefits, such as vacation or sick pay, that could be involved in effects bargaining. Any severance pay due the business agents in this case would be subject to the bargaining process and Respondent is not required to agree to anything, provided it bargains in good faith to impasse on the issue. Moreover, the typical remedy for effects bargaining, under the Board's order in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), sets a floor of 2 weeks backpay, a not unreasonable severance package, in view of the bargaining violation I have found.

The Information Request

This is an easy one. Respondent did not provide the information requested by the Union until November 9, 2010, after the complaint issued alleging an unlawful refusal to provide the information. This was almost 5 months after it was first requested. Even assuming that the new regime did not know about the first request, it is clear that Respondent knew of the second request, which was made on August 16. Respondent has no explanation for why it waited for another 2-1/2 months before providing the requested information, which was clearly, indeed, presumptively, relevant. Nor was the request onerous. It simply asked for the names and addresses of the roughly 20 employees in the unit, information to which it was clearly entitled.

Respondent's delay in providing the information was thus unreasonable. I find that, by its unreasonable delay in providing the information, Respondent violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondent violated Section 8(a)(5) and (1) of the Act by discharging employee Sonya Corish without giving the Union prior notice and an opportunity to bargain over the discharge or its effects.

2. Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain over the effects of its decision to discharge business agents and employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

3. Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing information to the Union.

4. The above violations are unfair labor practices affecting commerce within the meaning of the Act.

5. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent violated the Act in certain respects, I shall recommend that it cease and desist from engaging in such conduct, take affirmative action to remedy its violations, and post an appropriate notice. The Respondent will be ordered to bargain with the Union concerning its decision and the effects of its decision to discharge employee Sonya Corish and the effects of its decision to discharge employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke. Respondent will also be ordered to reinstate employee Sonya Corish and make her whole for any losses she may have suffered because of its unlawful refusal to bargain over her discharge. See *Lapeer Foundry & Machine*, 289 NLRB 952, 955-956 (1988). Any backpay owing, less any net interim earnings, shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Respondent's failure to engage in effects bargaining on the discharge of employees Dyches, Hood, Hurd, Miller and Parke shall be remedied by a backpay remedy similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998). Thus, the Respondent shall pay those employees backpay at their normal wages from 5 days after the date of this order until the earliest of the following conditions: (1) the date Respondent bargains to agreement as to the effects of the discharges; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this order or to commence negotiations within 5 days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date they were discharged to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event, shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay, less any net interim earnings, shall be

computed in accordance with the Board cases cited above, in connection with Corish's backpay.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:[8]

ORDER

The Respondent, Pennsylvania State Corrections Officers Association, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing or failing to bargain in good faith with the Union in the following appropriate unit:

> All full-time and regular part-time business agents and support staff employed by Respondent, excluding all other employees, guards and supervisors within the meaning of the Act.

(b) Refusing to bargain collectively with the Union by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving the Union prior notice and an opportunity about those changes.

(c) Refusing to bargain collectively with the Union by unreasonably delaying in providing relevant information requested by the Union.

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with the Union as the exclusive collective bargaining representative of the employees in the above appropriate unit.

(b) On request, bargain with the Union with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

(c) Within 14 days from the date of this order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

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[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Make Sonya Cornish whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section of this decision.

(e) Within 14 days from the date of this order, remove from its files any reference to Cornish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Pay its discharged business agents, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke, their normal wages for the period set forth in the remedy section of this decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(h) Within 14 days after service by the Region, post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 24, 2010.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 17, 2011

Robert A. Giannasi
Administrative Law Judge

[9] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

JD–11–11
Harrisburg, PA

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse or fail to bargain in good faith with Business Agents Representing State Union Employees Association (BARSUEA) in the following appropriate unit:

All full-time and regular part-time business agents and support staff employed by Pennsylvania State Corrections Officers Association (PSCOA), excluding all other employees, guards and supervisors within the meaning of the Act.

WE WILL NOT refuse to bargain collectively with BARSUEA by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity about those changes.

WE WILL NOT refuse to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective bargaining representative of the employees in the above appropriate unit.

JD–11–11
Harrisburg, PA

WE WILL, on request, bargain with BARSUEA with respect to the effects of our decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

WE WILL pay Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke their normal wages for the period set forth in the remedy section of the Board's decision.

WE WILL, within 14 days of the date of the Board's order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

WE WILL make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section in the Board's decision.

WE WILL, within 14 days of the date of the Board's order, remove from our files any reference to Corish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, One Independence Mall, 7th Floor
Philadelphia, Pennsylvania 19106-4404
Hours: 8:30 a.m. to 5 p.m.
215-597-7601.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.

JD-11-11ER

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

Cases 4-CA-37648
4-CA-37649
4-CA-37652

BUSINESS AGENTS REPRESENTING
STATE UNION EMPLOYEES ASSOCIATION

ERRATUM

The first page of the decision in this case, which issued March 17, 2011, contains errors in its recitation of the date of the trial and the name of counsel for Respondent. The date of the trial should be changed to January 26 and 27, 2011, and the name of Respondent's counsel should be changed to Richardson Todd Eagen.

Dated: Washington, D.C. March 18, 2011

Robert A. Giannasi
Administrative Law Judge

Pennsylvania State Corrections Officers Association *and* Business Agents Representing State Union Employees Association. Cases 04–CA–037648, 04–CA–037649, and 04–CA–037652

March 23, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND GRIFFIN

On March 17, 2011, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Acting General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Pennsylvania State Corrections Officers Association, Harrisburg, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Business Agents Representing State Union Employees Association (BARSUEA) by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity to bargain about those changes and their effects.

(b) Refusing to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards, and supervisors within the meaning of the Act.

(b) On request, bargain with BARSUEA with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke.

(c) Within 14 days from the date of this order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(d) Make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section of the judge's decision.

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[1] The Acting General Counsel mistakenly contends that the judge failed to find an effects-bargaining violation with respect to employee Sonya Corish's discharge. It is clear from the judge's decision that he did find that violation.

[2] We adopt the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to give effect to and repudiating a July 19, 2010 collective-bargaining agreement (the July 19 agreement) negotiated and executed by the Charging Party and the Respondent's outgoing president, Donald McNany. Contrary to the judge, we find that McNany remained president until his successor, Roy Pinto, was sworn in on July 20, 2010. Nevertheless, we agree with the judge that, pursuant to the Respondent's constitution, McNany lacked actual authority to bind the Respondent to the July 19 agreement, absent approval from the Respondent's executive board.

We also agree with the judge that McNany lacked apparent authority to bind the Respondent to the July 19 agreement. Apparent authority "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the agent to perform the acts in question." *Corner Furniture Discount Center*, 339 NLRB 1122, 1122 (2003). The Acting General Counsel contends that the Charging Party would reasonably have believed, based on McNany's status and duties as president, that McNany had authority to enter into the July 19 agreement without executive-board approval. We disagree. The July 19 agreement was negotiated by McNany and Shawn Hood, the Charging Party's president and bargaining agent. Hood has been an active member of the Respondent since its founding in 2001, and had, before his termination, represented the Respondent as a business agent since 2003. Hood was involved in the Respondent's internal politics and actively supported McNany in his 2010 campaign for reelection. Hood also admitted to being familiar with at least some portions of the Respondent's constitution. Based on Hood's knowledge of, and involvement in, the Respondent's inner workings, we are satisfied that he did not reasonably believe that McNany had authority to bind the Respondent to the July 19 agreement.

[3] We shall modify the judge's recommended Order to conform to the violations found and to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

In accordance with his dissenting view in *Kadouri International Foods*, 356 NLRB 1201, 1201 fn. 1 (2011), Member Hayes would delete that portion of the remedy requiring that the minimum backpay due employees should not be less than 2 weeks' pay, without regard to actual losses incurred.

(e) Within 14 days from the date of this order, remove from its files any reference to Corish's unlawful discharge and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Pay its discharged business agents, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke, their normal wages for the period set forth in the remedy section of the judge's decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(h) Within 14 days after service by the Region, post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Business Agents Representing State Union Employees Association (BARSUEA) by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity to bargain about those changes and their effects.

WE WILL NOT refuse to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time business agents and support staff employed by us, excluding all other employees, guards, and supervisors within the meaning of the Act.

WE WILL, on request, bargain with BARSUEA with respect to the effects of our decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke.

WE WILL pay Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke their normal wages for the period set forth in the remedy section of the Board's decision.

WE WILL, within 14 days of the date of the Board's Order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

WE WILL make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section in the Board's decision.

WE WILL, within 14 days of the date of the Board's Order, remove from our files any reference to Corish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION

Henry R. Protas, Esq., for the General Counsel.
Richardson Todd Eagen, Esq., of Harrisburg, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on January 26 and 27, 2010. The complaint alleges that Respondent (PSCOA) violated Section 8(a)(5) and (1) of the Act by failing to give effect to, and thereafter repudiating, a collective-bargaining agreement between it and the Charging Party Union (the Union or BARSUEA). The amended complaint also alleges that Respondent violated Section 8(a)(5) and (1) by discharging employees represented by the Union without prior notice to the Union and without affording it an opportunity to bargain concerning the discharges and their effects; and by failing to provide, or, as further amended at the hearing, unreasonably delaying in providing, relevant information to the Union. The Respondent filed an answer denying the essential allegations in the complaint.

After the conclusion of the trial, the Acting General Counsel and the Respondent submitted briefs, which I have read and considered. Based on the entire record in this case, including the testimony of the witnesses, and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, an unincorporated Pennsylvania association with an office in Harrisburg, Pennsylvania, represents employees in bargaining units within the Commonwealth of Pennsylvania. In a representative 1-year period, Respondent received dues and fees in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly outside the Commonwealth. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

Background and Contested Election for Leadership of Respondent

Since June 2001, Respondent has represented some 11,000 correctional officers at 28 facilities in Pennsylvania's prison system. It is led by a 13-member executive board, including a president and other officers. And it operates under a written constitution that sets forth the responsibilities and duties of its officers and governing executive board. (Tr. 22; GC Exh. 2.) Respondent's headquarters are located in Harrisburg, where its president and other officers and employees maintain offices.

In May 2009, Ron Pinto, Respondent's eastern regional vice president and a member of its executive board, announced that he was a candidate for the office of president of Respondent in an election that would be held to fill the position in June 2010. The incumbent president, Donald McNany, who had been in office since August 2002, also announced that he was running for reelection. For the last several years, Pinto and his allies were a minority on the executive board, consistently outvoted by McNany and his supporters. (Tr. 49–50.)

A mail-ballot election to select Respondent's officers and executive board was scheduled for June 2010. Although there were three slates of candidates, the real contest was between McNany, and his mostly incumbent slate, and Pinto, whose slate included some incumbents, but was regarded as the insurgent group. The ballots were mailed to the membership in late May and completed ballots were counted on June 25, 2010, at the offices of the American Arbitration Association in Philadelphia. (Tr. 19, 51–52.) Pinto received a majority of the votes for president, and some candidates on his slate were also elected. But some of the other positions required a runoff election because no candidate had received a majority. (R. Exh. 1; Tr. 26.) The runoff election was held on August 17, 2010. (Tr. 161.) After the runoff election, the Pinto slate controlled all of the 13 executive board positions.

After the June 25 announcement of the vote results for president, there was confusion as to when Pinto was going to take office and when McNany would leave office. McNany, who lives in Butler, some 230 miles from Harrisburg, moved out of the president's office in Harrisburg on June 29. On that date, Pinto moved into the office. However, in some respects, McNany continued to act as president and some of the incumbent officers and board members continued in office until the results of the runoff election were announced a month later. In addition, the Elections Committee, which apparently supervised the election, sought a manual recount of the election results,

further delaying an orderly transition. In support of his effort to clarify the situation, Pinto filed a lawsuit to certify the election results and determine when exactly he could take office. On July 15, 2010, Judge Andrew Dowling of the Court of Common Pleas for Dauphin County, issued a memorandum opinion and order providing, inter alia, that Pinto and four other elected officers and executive board members be certified as having won their positions effective July 8, 2010. (GC Exhs. 7, 8.) Later that day, Pinto announced that he would be sworn in as president on July 20; he was in fact sworn in on July 20 at Respondent's headquarters in Harrisburg.

The Union Wins Representation Rights for Respondent's Employees and Concludes an Agreement with McNany

On June 25, 2010, the Union filed an election petition with the Board's Regional Office in Philadelphia seeking to represent Respondent's roughly 20 business agents and staff employees. (Tr. 24, 85; GC Exh. 3.)[1] The petition was faxed to the Regional Office late in the day on June 24 by Shawn Hood, the Union's president and a business agent for Respondent. Hood had been a supporter of the loser in the presidential election, Donald McNany, and was present in Philadelphia when the vote count was announced on June 25. Hood had indicated on the election petition that the Respondent's representative was Ron Pinto so it was served on Pinto. Since Pinto had not yet taken office when the petition was served on him, on June 28, he walked across the hall to McNany's office and hand delivered the petition to McNany. (Tr. 14–15.)

On July 1, 2010, the Respondent and the Union entered into a stipulated election agreement, approved by the Region, setting an election for July 12, 2010, in the following unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards and supervisors.

(GC Exh. 4; Tr. 26–27.) The election was held as scheduled and the Union won. On July 21, 2010, the Board certified the Union as the official bargaining representative of the Respondent's employees. (GC Exh. 6.)

Between the election and the Board's certification, McNany, on behalf of Respondent, and Hood, on behalf of the Union, engaged in three negotiating sessions, the last of which was to go over the language of and sign a final collective-bargaining agreement. At the last session, on July 19, McNany and Hood signed the agreement, which had a 5-year term and contained new and generous severance and other benefits. (Tr. 33–35, 59, 60–63; GC Exh. 9.) McNany and Hood met in western Pennsylvania, where they both lived, not at Respondent's Harrisburg offices. (Tr. 69–70.) Nor did McNany consult Respondent's executive board or Pinto on any matter involving the Union's representation rights, the negotiations, or the collective-bargaining agreement he and Hood signed. (Tr. 54–60.) McNany testified that, at the end of July, he submitted a copy of the collective-bargaining agreement to Sam Brezler, the outgoing secretary of Respondent. Brezler was retiring and had not run for reelection; he was still in office, awaiting the selection of his successor, who would be chosen in the runoff election on August 17, 2010. (Tr. 38–39, 72.)

The Union's Information Request

On July 20, 2010, the Union's secretary-treasurer, Patricia Hurd, prepared a letter asking Respondent to provide the names and addresses of the unit employees. Hurd, who, as one of Respondent's business agents, had an office at Respondent's Harrisburg headquarters, placed a copy of the letter in McNany's mailbox at headquarters. But, because Pinto was being sworn in as president that day, she also placed a copy, along with a covering note, in Pinto's mailbox at headquarters. (Tr. 140–142; GC Exhs. 11, 12.)

Hurd received no response to her July 20 request so she sent another request, dated August 16, 2010, to Jason Bloom, Respondent's western regional vice president, asking for the same information she had requested the month before. (GC Exh. 13; Tr. 144–145.) The Union received no reply to this letter, but, on November 9, 2010, after the initial complaint issued in this case, Respondent's lawyer did provide the requested information to the Union. (R. Exh. 11; Tr. 205, 146–147.) Pinto testified that he was unaware of the July 20 request, and, although he was aware of the August 16 request, he did not answer that request immediately because he was seeking evidence of the Union's certification, which he did not confirm until August 23. (Tr. 216–217.) Although the complaint simply alleges that the information was not provided, at the hearing, counsel for the Acting General Counsel effectively amended the complaint on this issue and now alleges that the Respondent unreasonably delayed providing the information. (Tr. 142–143.)

Respondent's New Regime Discharges Some Employees and Refuses to Acknowledge the July 19 Bargaining Agreement

According to Jason Bloom, who was reelected to Respondent's executive board on the Pinto slate as western regional vice president in June 2010, the Pinto slate's platform on Respondent's business agents and employees was essentially one word, "change." (Tr. 226–227.) In accordance with that view, on July 17, 2010, Bloom sent a letter to all 13 business agents of Respondent asking each of them to submit a letter of interest to be considered for a continued business agent position by the end of the day on July 20. The letter stated that those who were not interested in remaining as business agents should return Respondent's property in their possession and that those who wanted to remain would be scheduled for interviews. (R. Exh. 7; Tr. 228–229.) All but one indicated an intent to remain. (Tr. 229.) Bloom conducted interviews in the first 2 weeks of August. On August 20, 2010, seven of the business agents were notified that they had been terminated and that they should make arrangements to return to their positions as correctional officers. (GC Exh. 14.) Subsequently, the terminations of two of the business agents, those of Robert Smith and Larry Blackwell, were rescinded and they were retained by Respondent. (Tr. 232.)[2]

[1] At that time, Respondent employed 13 business agents and 7 clerical employees.

[2] As indicated in the termination letters, the Respondent's business agents were on leave of absence from their positions as corrections

One other employee was discharged by Respondent after the Pinto team took office. She was Sonya Corish, a staff employee, who carried the job description of lung and heart clerk. She was terminated on August 18 (Tr. 232–234).

On August 23, 2010, the Union filed grievances with the Respondent alleging that it had violated the July 19 collective-bargaining agreement by "terminating employees without just cause," failing to pay them "the negotiated severance and unused leave," and failing to bid the vacant positions. (GC Exh. 15.)

On August 27, 2010, Respondent, through its lawyer, sent the Union a letter in response to the grievances. The letter stated that the Respondent had just recently learned of the existence of the Union and its July 19 collective-bargaining agreement. The letter also stated that the agreement was void because McNany had no authority to sign the agreement on behalf of the Respondent since he had been voted out of office and the agreement had not been approved by Respondent's executive board, as required by Respondent's constitution. (GC Exh. 16.)

On January 3, 2011, Respondent entered into a new collective-bargaining agreement with the Union. That agreement, which runs for a term of 1 year and dispenses with the lucrative severance and other benefits in the July 19 agreement, was signed by President Pinto and a representative of the Union. (R. Exh. 10.) Unlike the July 19 agreement, the new agreement was approved by Respondent's executive board. (Tr. 204–205.)

Discussion and Analysis

The complaint presents three basic questions: (1) Did the Respondent violate Section 8(a)(5) and (1) of the Act by failing to give effect to, and repudiating, the July 19 collective-bargaining agreement negotiated and signed by McNany and Hood; (2) Did Respondent violate the Act by, unilaterally and without giving prior notice to the Union, discharging employees in August 2010, and failing to bargain over the discharges and their effect; and (3) Did Respondent unreasonably delay providing information to the Union in response to its information request. Respondent contests the validity of the July 19 collective-bargaining agreement, but does not contest the Union's representative status. Thus, the complaint allegations must be considered in that light.

Failing to Give Effect to and Repudiating the July 19 Bargaining Agreement

The Acting General Counsel's allegation that Respondent unlawfully failed to give effect to and repudiated the July 19 collective-bargaining agreement turns on whether McNany had the authority to negotiate and execute the agreement. I agree with the Respondent that McNany had no such authority.

First of all, when McNany negotiated and signed the agreement, he was the defeated former president of Respondent. The vote count announced on June 25 not only showed that Pinto had received a majority of the votes cast for that position, but that McNany was not even a close second. He trailed Pinto by over 1000 votes, out of the some 4500 votes cast for three presidential candidates. (R. Exh. 1.) Although there was some confusion as to exactly when the new president would take office, that was a technicality eventually resolved by a state court judge, who ruled, on July 15, that Pinto should be certified as having won the presidency as of July 8. Actually, McNany had physically abandoned his office in Harrisburg on June 29, and Pinto moved into that office on the same day. McNany had retreated to his home in Butler, Pennsylvania, 230 miles away from Respondent's headquarters in Harrisburg. Nor did McNany seek, or receive, any specific authority to negotiate or sign an agreement from either the executive board or the newly elected president. In these circumstances, I find that McNany had no actual authority to negotiate or sign the July 19 bargaining agreement.

Even if McNany could, by some stretch of the imagination, still be considered president of Respondent when he negotiated and signed the July 19 agreement, he did not have the authority, under Respondent's constitution, to bind Respondent without the approval of Respondent's executive board, which he never sought or received. At the outset, the July 19 agreement committed Respondent to wages and benefits well in excess of the $5000 limit, beyond which executive board approval was required. (Tr. 60–63.) Contrary to McNany's testimony, the absence of any provision in the constitution governing collective bargaining for Respondent's employees does not give him the authority to conclude such agreement in excess of the $5000 limit. Even though the constitution is silent on the authority over bargaining agreements, the constitution does give the executive board, not the president, authority over financial commitments and personnel and benefits policies that are typically covered by bargaining agreements. (See GC Exh. 2, pp. 9–11; Tr. 60–66.) The executive board is also empowered to enter into agreements necessary to effectuate its purposes and objectives. (GC Exh. 2, p. 10.) The record contains documentary evidence showing that the executive board regularly approved agreements, financial commitments, and personnel policies in accordance with its constitutional authority. (See Tr. 240–264, and accompanying exhibits.) Indeed, the "governing authority" of Respondent resides in the executive board and the president simply has the responsibility to enforce and carry out "the policies established" by the executive board. (GC Exh. 2, p. 4 and 9.) Nor, contrary to McNany's testimony, does the president have the sole authority to construe or interpret the constitution. That responsibility may initially fall upon the president, but the constitution clearly states that the president's authority is "subject to the approval of the executive board." (Tr. 68; GC Exh. 2, pp. 5–6.) Thus, the ultimate authority to commit Respondent to a collective-bargaining agreement rests not with its president, but with its executive board.

Nor did McNany have apparent authority to bind Respondent to a collective-bargaining agreement. Apparent authority "results from a manifestation by the principal to a third party that

officers with the Commonwealth of Pennsylvania. Indeed, since January 2007, they were paid a salary by the Commonwealth, which was reimbursed by Respondent. So when they were terminated, the business agents returned to their jobs as corrections officers. Likewise, an outgoing officer of Respondent, such as McNany, who was defeated for reelection, was able to return to his position as a corrections officer. McNany did indeed return to his position as a corrections officer in August 2010.

creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question." *Corner Furniture Discount Center, Inc.,* 339 NLRB 1122, 1122 (2003). "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that his conduct is likely to create such belief." Id., cited with approval in *Mastec Direct TV*, 356 NLRB 809, 809–810 (2011). Neither of these situations is present here. Contrary to the Acting General Counsel's assertion in his brief (Br. 33), the Respondent's new leadership gave no signals that McNany was acting in its interests. Quite to the contrary, it vigorously fought against McNany's attempt to remain in office after his election defeat, even to the point of filing a lawsuit to uphold the election results. There was thus no manifestation by anyone from Respondent, aside from McNany, its purported agent, to Hood that would provide a reasonable basis for him, or anyone else, to believe that McNany had the apparent authority to negotiate and conclude a collective-bargaining agreement on behalf of Respondent. See also *300 Exhibit Services & Events, Inc.*, 356 NLRB 415, 418–419 (2010).[3]

Indeed, it appears that Hood and McNany tried to keep their negotiations secret in an effort to conclude an agreement before Respondent's newly elected leadership took office. The agreement, as noted, was signed 1 day before Pinto was sworn in as president. But to rule that McNany was authorized to act on July 19, but not on July 20, would exalt form over substance. Both Hood and McNany knew that McNany had no legitimacy to act on behalf of Respondent at this time. They knew McNany had lost the election as early as June 25. Indeed, Hood himself had named Pinto as Respondent's representative when he filed the election petition before the Union was even selected as bargaining representative. Moreover, a judge had directed that Pinto be certified as the winner of the election as of July 8. And it was generally announced and known throughout the membership on July 15 that Pinto would be sworn in on July 20. But McNany and Hood carried on sham negotiations in an effort, I believe, to give a semblance of legitimacy to the greater benefits, including severance benefits, that the July 19 agreement gave to business agents like Hood, who probably read the handwriting on the wall that he might be ousted by the new regime. Hood had supported McNany in the presidential election and he and McNany colluded to give Hood a questionable one-time payment of over $40,000 shortly before McNany left office, supposedly for a past inequity in pay. Indeed, the check to Hood was issued the day before the election results for Respondent's officers and executive board were announced. (See Tr. 270–292 and accompanying exhibits.) The relationship between Hood and McNany was not at arms length and it infected the whole bargaining process that led to the signing of the July 19 agreement. This provides additional support for my view that McNany had no authority, actual or apparent, to commit the Respondent to a 5-year collective-bargaining agreement that gave unusually generous benefits to business agents like Hood.[4]

In sum, McNany had no authority to enter into the July 19 collective-bargaining agreement. Thus, that agreement has no legitimacy. It follows that Respondent did not violate the Act when it refused to give the agreement any effect and when it repudiated the agreement. I shall therefore dismiss those allegations in the complaint.[5]

The Discharge of Business Agents and a Clerical Employee

The complaint also alleges that Respondent violated its bargaining obligation by discharging employees represented by the Union on August 20, 2010, without giving prior notice to the Union, and by failing to bargain about the discharges and their effects. It is settled that an employer violates Section 8(a)(5) and (1) of the Act by unilaterally changing employee wages, hours and other terms and conditions of employment—mandatory subjects of bargaining—without first providing their bargaining representative prior notice and opportunity to bargain over those changes. *NLRB v. Katz, 369* U.S. 736 (1962). Termination of employment has long been considered a mandatory subject of bargaining, requiring bargaining over discharges after they have occurred. *Ryder Distribution Resources,* 302 NLRB 76, 90 (1991). But the prior notice rule does not automatically apply before discharges actually occur. The Board has held that, where an employer has in place predisciplinary policies that limit discretion, and applies those policies, there is no requirement that the employer bargain before each employee is disciplined, although there may be such a requirement after the discipline is imposed. See *Fresno Bee*, 337 NLRB 1161, 1186–1187 (2002).[6]

Contrary to the Acting General Counsel's assertion that the Union was not given prior notice of the discharge of Respond-

[3] There is testimony that Hood asked McNany, at one point during the negotiations, whether McNany needed to get anyone else involved and McNany replied in the negative. That statement does not establish apparent authority. In fact, it supports the notion that Hood knew he was on shaky ground in dealing with McNany. In any event, it is well settled under general agency principles that the statements of a purported agent cannot establish the existence of an agency relationship. *Karavos Campania Naviera S.A. v. Atlantica Export Corp.,* 588 F.2d 1, 11 (2d Cir. 1978), citing authorities.

[4] For example, the July 19 agreement commits Respondent to pay 13 business agents, including Hood, salaries of over $70,000 each for 5 years, provides for a $5000 per month credit card authorization and $100,000 travel and life insurance for each agent, and provides for a severance package to each agent that amounts to 2 months salary for every year of service. For someone like Hood, that would net him over $70,000 in severance pay. Tr. 60–63.

[5] In support of his position, the Acting General Counsel cites (Br. 27 fn. 17, 31) *Teamsters Local 575*, 259 NLRB 344 (1981). But that case is distinguishable. In *Teamsters*, unlike here, the issue was whether the employer's former leadership unlawfully assisted the clerical union, which obtained bargaining rights and later negotiated and signed a bargaining agreement with the employer. Moreover, unlike in this case, in *Teamsters*, the outgoing official who signed the bargaining agreement on behalf of the employer did so before he was voted out of office and he secured an opinion from counsel that he was not required to obtain the approval of the executive board.

[6] In *Alan Ritchey, Inc.*, 354 NLRB 628 (2009), a two-member panel of the Board cited *Fresno Bee* with approval and observed, at fn. 11, that *Fresno Bee*, which found no violation, was not irreconcilable with *Washoe Medical Center, Inc.*, 337 NLRB 202 (2001), a case finding a violation.

ent's business agents, the record shows that such notice was given. On July 17, all of Respondent's 13 business agents were sent a letter asking them to submit a letter of interest to retain their jobs. The letter stated that those who expressed an interest in keeping their jobs would be interviewed. The clear implication was that continued employment depended on a successful interview. This should have put all business agents on notice that they might be terminated. Since this was the entire unit of business agents, such notice was tantamount to notice to the Union. Among those receiving the July 17 letter were the Union's president and its secretary-treasurer. Yet the Union made no request to bargain prior to the interviews or the possible terminations. In these circumstances, I find that the Union had adequate notice of the impending terminations and its failure to request bargaining permitted Respondent to carry out the termination decisions implicit in the July 17 notices unilaterally. Accordingly, the complaint is dismissed insofar as it alleges a violation with respect to the discharge of the business agents on August 20, 2010, without giving the Union prior notice or opportunity to bargain.

The discharge of clerical employee Sonya Corish is a different matter. She was not a business agent so she did not receive a copy of the July 17 notice. Indeed, neither she nor the Union received prior notice that she might be discharged. However, the Respondent interposes another defense to the complaint, which has particular application to Corish's situation. Respondent contends, contrary to the testimony of former President McNany, who insisted all of Respondent's employees were at-will employees, that the employees were covered by a predisciplinary policy that severely limited Respondent's discretion. The existence of such a policy, Respondent further contends, relieved it of any advance bargaining obligation, at least as to Corish's termination, under *Fresno Bee*, cited above.[7]

In support of its contention, Respondent refers to a policy statement issued to all of Respondent's executive officers by former President McNany on May 12, 2003. The statement pointed out that, at a May 7, 2003 executive board meeting, "we discussed and will implement the following disciplinary process:

> 1. Counseling session—Verbal, with notation of same in supervisory file.
> 2. Letter of reprimand—Copy to individual and supervisory file.
> 3. Unpaid suspension—Length of suspension will by determined by the offense.
> 4. Termination."

The policy statement concluded that "[b]y following this procedure, we will be able to establish just cause for any and all discipline imposed." (R. Exh. 3.) This policy statement was placed in Respondent's regularly maintained policy booklet that contained many other personnel policies that had been approved by the executive board. (Tr. 241–244.)

The problem with Respondent's position is that, when it discharged Corish, it did not apply the above disciplinary policies. It summarily discharged her for incompetency. It did not consider counseling, reprimand, or suspension before discharging Corish. (Tr. 166–168.) In these circumstances, I find that Respondent utilized virtually complete discretion when it discharged Corish. Since Corish was represented by the Union and the discharge obviously affected working conditions, I find that Respondent could not discharge her without providing prior notice and an opportunity to bargain to the Union. At the very least, had the Union been given prior notice, it could have insisted that Respondent adhere to its disciplinary policies when considering Corish's discharge. Ironically, Respondent is in the unusual, and, indeed, inconsistent, position of urging the existence of disciplinary policies as a defense to the violation alleged, but not following those very policies when it unilaterally discharged the individual. In these circumstances, I find that Respondent violated Section 8(a)(5) and (1) of the Act by discharging Corish without bargaining with the Union over both its decision to discharge her and the effects of that decision.

There is one remaining question: Was the Respondent required to bargain with the Union over the effects of the decision to discharge the business agents, even though there was no obligation to bargain prior to the decision because adequate notice was given to the Union? It is clear that the Union did not specifically ask to bargain either over the decision or its effects. Ordinarily that would end the matter. But the Union did file a grievance, after the August 20 discharge of the business agents, alleging that Respondent had violated the July 19 bargaining agreement by terminating employees without just cause. The July 19 bargaining agreement was, of course, not a valid agreement. But the grievance over the discharges essentially amounts to a request to bargain over the effects of the decision to discharge the business agents. Surely, an incumbent union may file a grievance, which essentially amounts to a request to bargain, even in the absence of a valid collective-bargaining agreement. I do not believe that the Union and the employees it represents should be penalized for the Union's having based its grievance on the void bargaining agreement. Had the Union known that it could not rely on the agreement and its grievance procedure to protect the rights of its members, it surely would have requested bargaining over the effects of the discharge decisions. I will therefore treat the grievance filing as a request by the Union to bargain over the effects of the decision to discharge the business agents. Respondent clearly failed to bargain over the effects of the discharge decision. Accordingly, I find that Respondent violated Section 8(a)(5) and (1) by failing to bargain over the effects of the decision to discharge the business agents. See *Ryder Distribution Resources*, above, 302 NLRB at 90.

Although Respondent need not bargain over the decision to discharge the business agents, it is required to bargain over its effects. I understand that the business agents returned to their former jobs as corrections officers. Their losses thus may be

[7] Respondent also raises this as an alternative defense to the allegation involving the business agents. But I do not reach the issue with respect to the business agents because, in their case, there was adequate prior notice before the discharges were effectuated, thus relieving Respondent of the requirement to bargain with the Union before effectuating the discharges.

minimal. But there may be severance pay and other accrued, but unpaid, benefits, such as vacation or sick pay, that could be involved in effects bargaining. Any severance pay due the business agents in this case would be subject to the bargaining process and Respondent is not required to agree to anything, provided it bargains in good faith to impasse on the issue. Moreover, the typical remedy for effects bargaining, under the Board's order in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), sets a floor of 2 weeks backpay, a not unreasonable severance package, in view of the bargaining violation I have found.

The Information Request

This is an easy one. Respondent did not provide the information requested by the Union until November 9, 2010, after the complaint issued alleging an unlawful refusal to provide the information. This was almost 5 months after it was first requested. Even assuming that the new regime did not know about the first request, it is clear that Respondent knew of the second request, which was made on August 16. Respondent has no explanation for why it waited for another 2-1/2 months before providing the requested information, which was clearly, indeed, presumptively, relevant. Nor was the request onerous. It simply asked for the names and addresses of the roughly 20 employees in the unit, information to which it was clearly entitled. Respondent's delay in providing the information was thus unreasonable. I find that, by its unreasonable delay in providing the information, Respondent violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondent violated Section 8(a)(5) and (1) of the Act by discharging employee Sonya Corish without giving the Union prior notice and an opportunity to bargain over the discharge or its effects.

2. Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain over the effects of its decision to discharge business agents and employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke.

3. Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing information to the Union.

4. The above violations are unfair labor practices affecting commerce within the meaning of the Act.

5. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent violated the Act in certain respects, I shall recommend that it cease and desist from engaging in such conduct, take affirmative action to remedy its violations, and post an appropriate notice. The Respondent will be ordered to bargain with the Union concerning its decision and the effects of its decision to discharge employee Sonya Corish and the effects of its decision to discharge employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke. Respondent will also be ordered to reinstate employee Sonya Corish and make her whole for any losses she may have suffered because of its unlawful refusal to bargain over her discharge. See *Lapeer Foundry & Machine*, 289 NLRB 952, 955–956 (1988). Any backpay owing, less any net interim earnings, shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Respondent's failure to engage in effects bargaining on the discharge of employees Dyches, Hood, Hurd, Miller, and Parke shall be remedied by a backpay remedy similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998). Thus, the Respondent shall pay those employees backpay at their normal wages from 5 days after the date of this order until the earliest of the following conditions: (1) the date Respondent bargains to agreement as to the effects of the discharges; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this order or to commence negotiations within 5 days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date they were discharged to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event, shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay, less any net interim earnings, shall be computed in accordance with the Board cases cited above, in connection with Corish's backpay.

[Recommended Order omitted from publication.]

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No. 04-CA-037648
04-CA-037649 and
04-CA-037652

PENNSYVLVANA STATE
CORRECTIONS OFFICERS
ASSOCIATION,

Respondent,

And

BUSINESS AGENTS REPRESENTING
STATE UNION EMPLOYEES
ASSOCIATION,

Charging Party.

Place: Philadelphia, PA
Dates: April 14, 2014
Pages: 1 through 86

OFFICIAL REPORTERS

BURKE COURT REPORTING, LLC
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Wayne, NJ 07470
(973) 692-0660

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION Respondent, And BUSINESS AGENTS REPRESENTATIVE STATE UNION EMPLOYEES ASSOCIATION Charging Party.	Case No. 4-CA-037648 4-CA-037649 4-CA-037652

The above-entitled matter came on for hearing pursuant to Notice, before THE HONORABLE ROBERT GIANESSI, Administrative Law Judge, at the 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania, in Hearing Room 2, on Monday, April 14th, 2014, at 10:00 a.m.

A P P E A R A N C E S

1 On behalf of the General Counsel:
2
3 DAVID G. RODRIGUEZ
4 National Labor Relations Board, Region 4
5 615 Chestnut Street, 7th Floor
6 Philadelphia, PA 19106
7
8
9 On Behalf of the Respondent:
10
11 MICHAEL McAULIFFE MILLER
12 Ekert, Seamans, Cherin & Mellott, LLC.
13 213 Market Street, 8th Floor
14 Harrisburg, PA 17101
15

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2

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Larry Sonnie	18	29	37	--	--
Lawrence Blackwell	38	41	--	--	--
William Parke	42	52	57	57	--
Richardson Todd Eagen	59	68	--	--	66
	67	--	--	--	--
Shawn Smith	70	79	--	--	--
Lawrence Blackwell	82	--	--	--	--

1
2 E X H I B I T S

EXHIBIT NUMBER	IDENTIFIED	RECEIVED
General Counsel's		
GC-1	5	5
GC-2	7	8
Respondent's		
R-1	9	9
R-2	30	31
R-3	32	33
R-4	61	67
R-5	66	67 (withdrawn)
R-5 (remarked)	75	75
R-6	75	75
R-7	77	77
Joint Exhibit		
J-1	6	6
J-2	6	6
J-3	6	6
J-4	6	6
J-5	6	6
J-6	6	6
J-7	6	6

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1 P R O C E E D I N G S

2 (Time Noted: 10:11 a.m.)

3 JUDGE GIANESSI: On the record. This is a formal

4 hearing before the National Labor Relations Board in the matter

5 of Pennsylvania State Corrections Officers, Case Number 4-CA-

6 37648.

7 Will Counsel state their appearances for the record?

8 MR. RODRIGUEZ: David D. Rodriguez for the General

9 Counsel.

10 MR. MILLER: Michael McAuliffe Miller for the

11 Respondent.

12 JUDGE GIANESSI: All right -- any Motions or

13 preliminary matters?

14 MR. RODRIGUEZ: Yes, Your Honor, well, the first

15 thing that we'd like to do is move for the introduction of the

16 -- of General Counsel's GC-1(a) through GC-1(i). That's the

17 Formal Papers.

18 JUDGE GIANESSI: Any objection?

19 MR. MILLER: No objection.

20 JUDGE GIANESSI: Received.

21 (General Counsel's GC-1 identified and received.)

22 MR. RODRIGUEZ: The second issue -- the second matter

23 that we'd like to address is we have a Stipulation of Fact.

24 It's the -- the Stipulation is Joint Exhibit J-7 and the

25 attachments are Joint Exhibit J-1 through J-6.

1 So we move for the introduction of the Stipulation of
2 Fact and their accompanying exhibits.
3 JUDGE GIANESSI: Any objection?
4 MR. MILLER: No objection.
5 JUDGE GIANESSI: I will receive these.
6 (Joint Exhibits J-1 through J-7 identified and received.)
7 MR. RODRIGUEZ: The other matter we have is an
8 amendment to our compliance specification. This has previously
9 been served on the Respondent. We're amending the charts that
10 the attachments to the Client's specification. The only
11 difference is there is an increase in interim earnings for four
12 of the Claimants and a decrease for one of them. There's no
13 change in the gross pay calculations for any of the Claimants.
14 MR. MILLER: Does this reflect the extra week? Is
15 that right?
16 MR. RODRIGUEZ: Yes.
17 MR. MILLER: Can you explain that to the Judge?
18 JUDGE GIANESSI: This is General Counsel's GC-2 and
19 it's basically an amendment to the base fact. Right?
20 MR. RODRIGUEZ: Right -- essentially for the four
21 Claimants, those excluding Bill Parke, that returned to their
22 Corrections Officer jobs prior to -- or after their discharge
23 from the employment of the Respondent. We learned that there
24 was no overlap or gap between their employment by the
25 Respondent, their employment by the Department of Corrections

1 of Pennsylvania. So we deducted a week of back pay that we had
2 initially included.
3 (General Counsel's GC-2 identified.)
4 JUDGE GIANESSI: Very good -- any objection to
5 General Counsel's GC-2?
6 MR. MILLER: I had already objected on the record.
7 I'll just put it on the record here to General Counsel's GC-
8 2(e), which is Bill Parke's back pay calculations for reasons
9 that I've explained in a side bar with Counsel and with the
10 Judge regarding Mr. Parke's subsequent employment after leaving
11 PSCOA. That --
12 JUDGE GIANESSI: Why don't you state it on the record
13 so that it's clear on the record as your position?
14 MR. MILLER: Yes, absolutely -- the position of the
15 Respondent is that Mr. Parke had the opportunity to return to
16 SCI Houtzdale -- I believe is the name of the facility from
17 which he came -- after he was separated from the State
18 Correctional Officers Association. He made a voluntary choice
19 not to return.
20 In so doing, it is the position of the Respondent
21 that totals any back pay to be asserted against the Respondent
22 for Mr. Parke based on his voluntary decision to leave the
23 Commonwealth. We have a dispute as to that, which you will
24 ultimately resolve as a matter of when. The objection that I
25 have to this exhibit and it's also in our Answer and it's well

1 understood by Mr. Rodriguez is that the document indicates that
2 there are intern earnings from something called Bridges at Bent
3 Creek, which is my understanding of a nursing home or some care
4 facility. Those interim earnings are at a lower rate than Mr.
5 Parke would have earned had he gone back to the facility from
6 which he came, as he had the opportunity to do. And so we
7 believe that the calculation is in care both based on the fact
8 that the back pay remedy should be told because he didn't go
9 back and the interim earnings at Bed Creek should not apply.
10 Now, again, we'll spread facts on the record. We'll
11 brief the issue. And ultimately, you, Your Honor, will decide
12 whether or not that has merit or no merit. But I wanted to
13 spread my objection on the record so that it's clear. I don't
14 think that this is any surprise to Mr. Rodriguez. And obviously
15 the rest of the document we do not object to.
16 JUDGE GIANESSI: So your position is that Parke's
17 back pay is zero.
18 MR. MILLER: Yes.
19 JUDGE GIANESSI: I'll receive General Counsel's GC-2
20 in evidence.
21 (General Counsel's GC-2 received.)
22 JUDGE GIANESSI: Any other preliminary matters?
23 MR. RODRIGUEZ: Your Honor, we believe that the
24 Respondent has an Amended Answer filed.
25 MR. MILLER: I believe that we did file the Amended

1 Answer.

2 MR. RODRIGUEZ: Well, you served it on me on March

3 17, but you never filed it.

4 MR. MILLER: Well --

5 JUDGE GIANESSI: So, it's not in the Formal Papers?

6 MR. RODRIGUEZ: No, it is not.

7 MR. MILLER: Can we amend the record to put it in the

8 Formal Papers, can we not, Your Honor? We'll make copies at the

9 break or something.

10 JUDGE GIANESSI: Yes.

11 MR. MILLER: Can we amend the Formal Papers on the

12 break with copies?

13 JUDGE GIANESSI: Let's just put it as Respondent's

14 Exhibit R-1.

15 MR. MILLER: Alright.

16 JUDGE GIANESSI: That's the Amended Answer.

17 (Respondent's R-1 identified.)

18 JUDGE GIANESSI: Any objection?

19 MR. RODRIGUEZ: No, Your Honor.

20 JUDGE GIANESSI: Received Respondent's Exhibit R-1 in

21 evidence.

22 (Respondent's R-1 received.)

23 MR. RODRIGUEZ: And then, Your Honor, finally the

24 last matter, I guess, is something that we discussed

25 previously. We expect that the Amended Answer -- I believe -- I

1 don't have my copy anymore -- but I believe that it's the
2 Answer to 2(d) of our Compliance Specification. It denies the
3 gross pay calculations for Claimant Bill Parke. And we expect
4 that the Respondent will admit, at least that those are the
5 calculations.
6 MR. MILLER: I have -- noting my previous objection,
7 Your Honor, that I think that we're told. And I think that I've
8 explained that at length and I think that Your Honor
9 understands it. I'm not going to object to the calculation, the
10 math, that's included in General Counsel's GC-2, sub (e), which
11 is the back pay calculation for Bill Parke.
12 JUDGE GIANESSI: In other words, if you lose that
13 24,332 figure is accurate.
14 MR. MILLER: If you don't accept my argument, yes,
15 then I don't have anyway of contesting the $24,000 amount.
16 JUDGE GIANESSI: Okay -- very good -- I'll accept
17 that as a Stipulation.
18 Alright, are you ready to call your first witness?
19 MR. RODRIGUEZ: Your Honor, think that it would be
20 helpful to make a brief Opening Statement to just kind of lay
21 out a roadmap.
22 JUDGE GIANESSI: Go ahead.
23 MR. RODRIGUEZ: Your Honor, this case concerns the
24 appropriate remedy for five Claimants: Lee Dyches, Shawn Hood,
25 Patricia Hurd, John Miller, and Bill Parke. On March 23, 2012

1 the Board issued an Order finding that the Respondent,
2 Pennsylvania State Corrections Officer Association, unlawfully
3 refused to bargain with Business Agents representing State
4 Union Employees Association, the Union, over the discharges of
5 the Claimants. The Board ordered the Respondent to bargain over
6 the discharges and granted transmarine back pay. The parties
7 met for their one and only bargaining session on April 4, 2012.
8 The facts will show that at this meeting Respondent
9 offered to pay Claimants the minimum transmarine remedy of two
10 weeks back pay offset by one week's severance package that the
11 Claimants received upon their discharge. However, the
12 Respondent offered such a remedy only as a credit against a
13 future award from lawsuits Respondent planned to file against
14 four of the five Claimants, who were allegedly fraudulent
15 mileage reimbursements. The Union rejected the Respondent's
16 offer arguing that the Respondent must seek a remedy for the
17 mileage reimbursements in a different form.
18 On April 10th the Union's Vice President, Lawrence
19 Blackwell, sent a written counterproposal to the Respondent
20 seeking two weeks back pay and unused leave for the five
21 Claimants.
22 On April 11th the Respondent rejected the Union's
23 counterproposal, declared impasse, and stated its intent to
24 implement its final proposal. It is the General Counsel's
25 position that although the parties had reached an impasse at

1 this time, such impasse was not lawful because it concerned a
2 permissive subject of bargaining, i.e. whether to grant
3 severance pay, back pay, to the Claimants as a credit towards
4 the anticipated recovery in a lawsuit.
5 This is one of the central issues Your Honor will
6 decide. Respondent's Amended Answer filed today admits the
7 General Counsel's back pay calculations, but denies that the
8 transmarine back pay period should have continued until
9 September 28th, 2012, the date on which the Union went to fund,
10 when the then Officers' terms expired, and no new Officers were
11 appointed.
12 Respondent suggested its Answer that the Union went
13 before that date, but failed to furnish a date or an
14 approximation of the date. If Your Honor agrees with the
15 General Counsel that the parties did not reach a lawful
16 impasse. This will be the second issue Your Honor will decide,
17 whether the transmarine back pay period ended on September 28,
18 2012 or at some point before then.
19 Finally, the third issue that Your Honor will decide
20 concerns Claimant Bill Parke. The issue to be decided will be
21 whether Parke failed to mitigate his damages by declining to
22 return to a Corrections Officer position that he held prior to
23 his employment with the Respondent. The facts in this issue are
24 largely uncontested and concern the question of whether Parke
25 was privileged to refuse to take a position that he had not

1 held in several years, was not substantially equivalent to the
2 position with Respondent, and was located 2½ hours away from
3 his residence.
4 These are the issues before Your Honor on this day.
5 Thank you.
6 JUDGE GIANESSI: Very good -- can you give me the
7 citation of the earlier Board Case? Or is it in your papers
8 somewhere?
9 MR. RODRIGUEZ: It's in Formal Papers. The original
10 ALJ, Board Order, is in the Formal Papers.
11 JUDGE GIANESSI: Alright -- very good.
12 MR. MILLER: Your Honor?
13 JUDGE GIANESSI: Yes.
14 MR. MILLER: For the Respondent, as I've said to you
15 previously, we can agree on many of the factual issues, but not
16 all of them. Otherwise, why would we be here? For the
17 Correctional Officers, there are several issues. First, it will
18 demonstrate through its case that the parties did reach impasse
19 in April of 2012 and correctly implemented its offer.
20 Your Honor, I will in my Briefs and repeatedly refer
21 to your Decision and Page 8 of your Decision, where you talked
22 about how the parties should bargain over the effects,
23 including severance pay and other accrued, but unpaid benefits,
24 such as vacation or sick pay that could be involved in that
25 effects bargaining.

1 Now, originally when we started this compliance
2 matter, the Government took the position that the wrong was
3 ongoing. They had finally accepted the point. The Union was
4 defunct in September of 2012. We believe that they reached
5 impasse through lawful bargaining in April of 2012 in any case.
6 The evidence will also demonstrate that there was a
7 petition to decertify the Union, a valid petition, that was
8 filed in January of 2012 and never processed by the Board.
9 You'll hear Mr. Thurman testify that after the
10 Board's Decision came down in March of 2012 it should have been
11 processed and that the Board dropped the ball, his words. I can
12 play the voicemail for Your Honor.
13 We believe that the Union itself was defunct before
14 April of 2012. There was a position outstanding, which the
15 Board failed to process properly, demonstrating that it was
16 defunct before September of 2012. Even if Your Honor would not
17 find that the Union was defunct, fundamentally defunct, before
18 April of 2012, again the issue of impasse is that the evidence
19 will demonstrate that the parties reached impasse.
20 With regard to Mr. Parke, the third issue, I listened
21 to Mr. Rodriguez's Open. Mr. Parke, there are five people: Mr.
22 Dyches, Mr. Hood, Ms. Hurd, Mr. Miller -- no relation, and Mr.
23 Parke. Okay? Mr. Dyches, Mr. Hood, Ms. Hurd and Mr. Miller all
24 went back to their original facilities. And, in fact, Ms. Hurd
25 requested and was granted a transfer to a different facility

1 because her life had -- she had bought a different house. And
2 we went from one facility to another because it's a big
3 Commonwealth and we can find a jail for you to work in.
4 Alright?
5 JUDGE GIANESSI: Well, let me ask you this?
6 MR. MILLER: Yes.
7 JUDGE GIANESSI: What is it that permits people to go
8 back to their original Corrections job from their Business
9 Agent position? Is it a Collective Bargaining Agreement?
10 MR. MILLER: Correct.
11 JUDGE GIANESSI: Is that in evidence? Is that in
12 evidence here before me or will it come in evidence?
13 MR. MILLER: You're going to hear testimony from the
14 current Vice President of the PSCOA that will indicate that
15 there's a long standing, multi-decade agreement with the
16 Commonwealth that when somebody becomes a Business Agent they
17 go -- when that term ends, they go back to their facility.
18 There's no objection to that. It's both contained within the
19 CBA and contained within the practice between the parties.
20 And, in fact, I can prove it because I don't think
21 that Mr. Rodriguez is going to dispute the fact that Dyches,
22 Hurd, Hood, and Miller also Business Agents, also seeking
23 relief, went back to the facilities.
24 JUDGE GIANESSI: Are you going to contest that this
25 is not only in the Collective Bargaining Agreement, but it's a

1 practice?

2 MR. RODRIGUEZ: Your Honor, no, we will not contest

3 that.

4 JUDGE GIANESSI: Alright -- now let me, Mr. Miller,

5 ask one other question.

6 MR. MILLER: Yes, sir.

7 JUDGE GIANESSI: In terms of the impasse, I know that

8 you have other arguments, but is it your position that the

9 Employer did not make it a condition of their offer that there

10 be credit for any lawsuit recovery or is it your position -- I

11 mean -- you factually dispute that, number one? Or is it,

12 number two, that even if that were a condition, that it's not a

13 permissive subject?

14 MR. MILLER: I don't think that there's any dispute

15 when you look at Joint Exhibit J-1, Joint Exhibit J-2, Joint

16 Exhibit J-3, and the testimony that you're going to hear from

17 our witnesses that the issue of an offset or improperly granted

18 mileage was an issue in bargaining between the parties. I will

19 also indicate that when you look at Joint Exhibit J-2, which is

20 a letter from the Union, signed by Mr. Blackwell, who's here in

21 the Courtroom today, that he, on behalf of the Union, raised

22 the issue of mileage. So, it was hardly a unilateral -- it was

23 a bi-lateral issue between the parties.

24 JUDGE GIANESSI: But the question is was it insisted

25 upon to the point of impasse?

1 MR. MILLER: It was certainly part of the impasse,
2 Yes, Your Honor.
3 JUDGE GIANESSI: So it was insisted upon. So your
4 position is that it is not a permissive subject. That it's a
5 mandatory subject.
6 MR. MILLER: That's right.
7 JUDGE GIANESSI: Okay.
8 MR. MILLER: And we'll brief that.
9 JUDGE GIANESSI: Alright -- very good -- I think that
10 we're ready to proceed now.
11 Mr. Rodriguez, do you want to call your first
12 witness?
13 MR. RODRIGUEZ: Yes, Your Honor, the General Counsel
14 calls Larry Sonnie to the stand.
15 Whereupon,
16 LARRY SONNIE
17 having been previously duly sworn, was recalled as a witness
18 and testified herein as follows:
19 JUDGE GIANESSI: Be seated, please. Give your name
20 and address to the Reporter.
21 THE WITNESS: My name is Larry B. Sonnie, Jr. Sonnie
22 is S-O-N-N-I-E. My address is 210 Walton Road, Lockhaven,
23 Pennsylvania.
24 MR. RODRIGUEZ: Your Honor, we'll proceed on. We
25 called this witness.

1 JUDGE GIANESSI: Yes.

2 DIRECT EXAMINATION

3 BY MR. RODRIGUEZ:

4 Q Mr. Sonnie, by whom are you employed?

5 A Pennsylvania State Corrections Officer Association.

6 Q How long have you worked there?

7 A Since 2001, July 2001.

8 JUDGE GIANESSI: Speak up, please.

9 THE WITNESS: Since July of 2001.

10 BY MR. RODRIGUEZ:

11 Q Have you ever been affiliated with a Union called Business

12 Agents Representing State Union Employees Association?

13 A Yes.

14 Q And how were you affiliated with it?

15 A I became the President of BARSUA in September of 2010.

16 Q During what time did you serve as President of BARSUA,

17 from September to what date?

18 A It's a two year term in the bi-laws. It would be September

19 of 2012.

20 Q During your term as President did you have an opportunity

21 to bargain with the Pennsylvania State Corrections Officer

22 Association over the effects of certain discharges?

23 A Yes.

24 Q Do you recall which Employees' discharges you bargained

25 over?

1 A Lee Dyches, Patricia Hurd, Shawn Hood, and Miller -- I
2 believe. I don't think that Parke was part of the first
3 meeting.
4 Q Under what basis do you have that Parke was not part of
5 the first meeting?
6 A I know that we discussed Parke, but I didn't -- we didn't
7 even know that he was part of the initial suit, as I stated on
8 the phone. I -- you guys supposingly sent me out the original
9 documentation, which I never got. So I didn't even really know
10 that we had to bargain until the PSCOA contacted me about it.
11 Q Okay, and that leads me to my next question, which is can
12 you tell me what prompted bargaining?
13 A I received a letter from Roy Pinto from the PSCOA letting
14 me know about the Board Charge. He sent me the Board Charge. I
15 went through it. And at that point Mr. Eagan contacted me and
16 we set up a meeting. I believe that it was April the 4th, 2012.
17 JUDGE GIANESSI: Where was the meeting?
18 THE WITNESS: The meeting was held at 2421 North
19 Front Street. It was PSCOA's Headquarters.
20 JUDGE GIANESSI: In what city?
21 THE WITNESS: Harrisburg, Pennsylvania.
22 BY MR. RODRIGUEZ:
23 Q Who attended that meeting for BARSUA?
24 A I'm not really sure of what the time was. It was probably
25 early afternoon.

1 Q Who attended it?
2 A Oh, who attended it? Myself, I think Mr. Eagan was there.
3 Bob Steward was there. I believe that Jason Bloom was there.
4 Q Can you tell me who was there representing the Union,
5 BARSUA?
6 A The Legal or everybody?
7 Q Well, I want you to identify who was at the meeting on
8 behalf of BARSUA and who was at the meting on behalf of PSCOA.
9 A I was at the meeting for BARSUA. For the PSCOA it was Mr.
10 Eagan, I think that Bob Steward was there. Jason Bloom was
11 there. I'm not sure if Tim Walsh was there. He may have been.
12 It's been two years.
13 JUDGE GIANESSI: Anybody else for BARSUA besides you?
14 THE WITNESS: No, it was just me. I originally
15 thought that the Treasurer or the Secretary was there. But I
16 went back and looked and she was not there on that day.
17 BY MR. RODRIGUEZ:
18 Q Now I want you tell us everything that was said at the
19 meeting. How did the meeting start?
20 A Mr. Eagan started the meeting off and we pretty much went
21 over the award that came back from you guys, from the NLRB. And
22 then we actually started talking about the terms of the
23 dismissals and stuff like that. I can't verbatim repeat what
24 happened two years ago, but that's how we started.
25 Q Well, as best as you can recall, what did -- did Eagan

1 state what PSCOA's position was?
2 A Yes, we went over their position, as far as --
3 Q And what was the position that he stated?
4 A He gave -- well, actually we talked back and forth about a
5 position -- about what the effects of the PSCOA -- I could not
6 contact him. They wouldn't return my phone calls.
7 JUDGE GIANESSI: Well, the question is what did Mr.
8 Eagan say about the position of the Correction Officers
9 Association? Just answer the question.
10 THE WITNESS: Verbatim? I don't understand what you -
11 -
12 BY MR. RODRIGUEZ:
13 Q As best as you can recall.
14 A We talked about the terminations. We talked about the
15 offer from them, what the offer was. I believe that it was two
16 weeks severance pay with a week carved out. We talked about --
17 Q Did they say how they wanted to pay that severance pay?
18 A If my memory -- it was originally two weeks, but they owed
19 money for mileage -- something with mileage benefits and stuff
20 like that.
21 Q When you say they, do you mean the Claimants?
22 A The Claimants -- yes, they said that there was fraudulent
23 mileage. So, it was a week. I think that the offer that we
24 talked about that and the two weeks and offset the week.
25 Q And when you say offsetting a week, can you explain that a

1 little further. How would that week be offset?
2 A Well, because they originally were given a week. Whenever
3 they were terminated, they were originally given a week paid to
4 go back to the institution.
5 Q Okay, but when you refer to the mileage that the Claimants
6 owed, how was that involved in the Employer's offer? Did Eagan
7 mention how they would pay that out?
8 A I'm not sure -- no, I'm not sure that we talked about
9 specifically how it would be paid out. We just talked about the
10 mileage, fraudulent mileage.
11 Q And what did that have to do with the bargain?
12 A The fraudulent mileage?
13 Q Yes.
14 A I don't really know. We just discussed that was an issue
15 and what we were going to do with it.
16 Q Mr. Sonnie, do you -- you mentioned that you could have
17 recall verbatim what was mentioned at the hearing. Do you
18 recall provided an affidavit to the NLRB on September 12th,
19 2012?
20 A Yes.
21 Q If you could turn to Page 3 of that affidavit and find --
22 I believe that it is -- it's about the third paragraph that
23 starts with 'Eagan then gave us'. Do you see that?
24 A The third page --
25 MR. MILLER: May I interpose an objection here, Your

1 Honor? I think that if the witness does not recall something
2 that he's been specifically asked about, then he can refer to a
3 document to refresh his recollection after a foundation has
4 been laid that he doesn't recall about a specific issue. So, I
5 ask that Mr. Rodriguez lay an appropriate foundation before he
6 uses this document to refresh the witness' recollection.
7 JUDGE GIANESSI: I'm satisfied with that he testified
8 that he cannot recall.
9 MR. MILLER: Okay.
10 JUDGE GIANESSI: He cannot recall very much, frankly.
11 BY MR. RODRIGUEZ:
12 Q Did you read the paragraph that said 'Eagan then gave us'?
13 A Yes.
14 JUDGE GIANESSI: Well, first of all, did you sign it?
15 THE WITNESS: Yes.
16 JUDGE GIANESSI: What's the date of it?
17 THE WITNESS: 9/12/2012.
18 JUDGE GIANESSI: Alright.
19 BY MR. RODRIGUEZ:
20 Q Did you find that paragraph that says 'Eagan then gave
21 us'?
22 A Yes.
23 Q Now read that paragraph to yourself and let me know when
24 you've finished.
25 A Okay.

1 JUDGE GIANESSI: Alright, he's finished reading it.
2 BY MR. RODRIGUEZ:
3 Q Mr. Sonnie, you finished reading that section of the
4 affidavit. Did it refresh your recollection on what the
5 Employer's offer was?
6 A Yes.
7 Q What was the Employer's offer?
8 A He gave us a whole document with the back pay, with the
9 mileage reimbursement stuff. And there was something with --
10 the mileage -- they wanted to take back the mileage for a week
11 or something like that because they owed them money is what we
12 talked about.
13 Q Did the PSCOA say anything about whether or not they had
14 to pay the Employees or the Claimants?
15 A To pay them the mileage?
16 Q Whether they owed them anything.
17 A No.
18 Q They didn't say anything about that or they said that they
19 didn't owe them? What's your testimony?
20 A I don't understand what you mean, about the mileage
21 reimbursement?
22 JUDGE GIANESSI: Listen, don't lead the witness.
23 MR. RODRIGUEZ: Okay.
24 BY MR. RODRIGUEZ:
25 Q Do you recall how you responded to the Employer's offer?

1 A Yes.
2 Q How did you respond?
3 A I pretty much told the Employer that I really didn't know
4 what the effects of bargaining were going to be on the
5 Employees because I wasn't the one terminated. I wanted to
6 contact the Employees to find out what the effects actually
7 were on them before we could go any further with the issue.
8 Q Did you say anything about an audit?
9 A Yes, we discussed an audit. And actually I was given a
10 copy of the audit at the meeting.
11 Q What did you say about the audit?
12 A That there was -- that -- you mean about the -- there was
13 an audit done about the mileage -- a forensic audit done about
14 the mileage. And we actually had a copy there and we gave a
15 copy to us. I didn't get a chance to go completely through the
16 copy that day. And I wasn't sure what was going on with the
17 audit, whether it was going to be passed or not, because I know
18 that there was some stuff with the District Attorney with that
19 audit too, which he actually refused to charge the Claimants.
20 Q And what -- I know that you testified that there was a
21 conversation about that. But what was the Union's position on
22 the audit and the Employer's offer?
23 A BARSUA's position?
24 Q BARSUA's position.
25 A Oh, that we couldn't accept the offer because we didn't

1 know if it was legitimate or not.
2 Q Okay, and when you say 'it' do you mean --
3 A This one.
4 Q Did Eagan say who the audit findings concern? What persons
5 the audit finding concern?
6 A I believe that it was -- I don't believe he actually
7 really said everybody. I know it concerned Hood. There were a
8 couple of different issues with Hood. I don't know if Miller
9 was talked about with the audit. I know that Dyches was. I
10 think that we discussed Hurd. Yes, we discussed two or three of
11 them. I think that it was mainly Dyches and -- he was the main
12 one, I believe.
13 Q When BARSUA -- when you rejected the Employer's first
14 proposal, how did the Employer respond, if they responded at
15 all?
16 A Well, when we received the first audit -- I believe that
17 it was April 4th of 2012 -- I tried to reach out to the effect
18 of Employees. None of them would return my phone calls.
19 So, at that time Larry Blackwell and I -- he was the Vice
20 President -- we were discussing the issue. He said that I had
21 contact with one of them.
22 And I said, "Fine, if they don't want to talk to me, then
23 I'm going to turn the whole thing over to you and you can deal
24 with it from here on out."
25 Q But, as far as -- you testified previously that you said

1 that BARSUA couldn't agree because you didn't know what if the
2 Findings were -- the suits were legitimate.
3 A Well, that and we didn't know how they were effected by it
4 when they were terminated.
5 Q How did Eagan respond, if he responded?
6 MR. MILLER: Just so the record is clear, when you
7 say 'them -- I don't know how they were --
8 THE WITNESS: Oh, I'm sorry.
9 MR. MILLER: Do you mean the Claimants?
10 THE WITNESS: Yes, the Claimants. We didn't know how
11 the Claimants were effected by it.
12 MR. MILLER: I'm sorry. I apologize.
13 BY MR. RODRIGUEZ:
14 Q How did Eagan respond to that statement that you couldn't
15 agree to it?
16 A He said, "That's fine. We'll make you an offer and we'll
17 get it to you in writing."
18 Q Did you ever receive an offer in writing?
19 A Yes.
20 JUDGE GIANESSI: What are you showing him?
21 MR. RODRIGUEZ: It's Joint Exhibit J-1.
22 BY MR. RODRIGUEZ:
23 Q Mr. Sonnie, I've given you a document marked Joint Exhibit
24 J-1.
25 A Yes.

1 Q What is that?
2 A This was the offer made from the Pennsylvania State
3 Corrections Officer Association.
4 (Jiont Exhibit J-1 identified.)
5 BY MR. RODRIGUEZ:
6 Q Did the Union ever -- and by the Union I mean BARSUA --
7 did BARSUA ever make a counterproposal to that offer?
8 A Yes, it's my understanding that Larry Blackwell made a
9 counteroffer in a letter.
10 Q Why did Blackwell make that counteroffer and not you?
11 A Because, like I said, the Employees effected here on the
12 first page -- I couldn't get any of them to respond to me and
13 he had contacted with them. So I turned the investigation over
14 to him as the Vice President to handle the bargaining with
15 them.
16 Q When did your term as President expire?
17 A September of 2012 -- I think that it would be like the 20
18 -- I'm not sure of the exact date. I think that it maybe was
19 the 27th or 28th or something like that.
20 JUDGE GIANESSI: Speak up.
21 THE WITNESS: I think maybe September 27th or 28th of
22 2012.
23 BY MR. RODRIGUEZ:
24 Q Were new officers -- were new BARSUA Officers elected or
25 appointed after your term expired?

1 A No.
2 Q Why not?
3 A We held elections. I think that we started on September
4 1st. I believe that was the date. We sent out for nominations
5 for Election Officers and nobody volunteered to run for office.
6 Q Who sent out those nominations?
7 A I did.
8 MR. RODRIGUEZ: No further questions, Your Honor.
9 JUDGE GIANESSI: Cross.
10 CROSS EXAMINATION
11 BY MR. MILLER:
12 Q Mr. Sonnie, I'm going to show you what we'll mark as -- I
13 believe -- Respondent's R-2. Let me just confer with my
14 colleague.
15 MR. MILLER: Do you have copies of the affidavit?
16 MR. RODRIGUEZ: The one that I showed you?
17 MR. MILLER: Yes.
18 MR. RODRIGUEZ: I just have the one copy.
19 MR. MILLER: Should we take a break and make a copy
20 so that it can be put into evidence? I have a copy and you have
21 a copy.
22 MR. RODRIGUEZ: I don't know that we can put it into
23 evidence yet.
24 MR. MILLER: He signed it. He's the witness.
25 MR. RODRIGUEZ: Why would it go into evidence?

1 MR. MILLER: Because I want to use it.
2 MR. RODRIGUEZ: I can make copies of it, but --
3 JUDGE GIANESSI: Well, don't make copies now. Just
4 use your copy that you have and I'll give you the opportunity
5 to --
6 MR. MILLER: That's fair, Your Honor.
7 JUDGE GIANESSI: -- at the next break.
8 MR. MILLER: Okay.
9 BY MR. MILLER:
10 Q I'm handing you what I've marked as R-2 of Respondent's R-
11 2. Sir, I remember you testifying on direct examination that at
12 the meeting of April 4th, 2012 that you were handed some
13 calculations and an audit. Is this the document that you were
14 handed, sir? Take time to look at it.
15 A I do remember seeing most of this stuff in here, yes.
16 There may have been more or there may be more. I'm not sure of
17 exactly how many pages there was, but this was part of it, yes.
18 (Respondent's R-2 identified.)
19 JUDGE GIANESSI: Do you want to introduce it at this
20 time?
21 MR. MILLER: Yes, Your Honor, I'd like to introduce
22 R-2.
23 JUDGE GIANESSI: Any objection?
24 MR. RODRIGUEZ: To the extent that the witness
25 testified that he received this during the meeting -- no

1 objections.

2 JUDGE GIANESSI: Received.

3 MR. MILLER: Thank you, Your Honor.

4 (Respondent's R-2 received.)

5 BY MR. MILLER:

6 Q Now let's see if I understood this correctly. Did I

7 understand your testimony correctly that it was the Employer,

8 PSCOA, and not BARSUA, the Union, reached out to start effects

9 bargaining? Is that right?

10 A Yes.

11 Q And you were asked on direct who appeared for the Union

12 and you said you. Right?

13 A Yes.

14 Q And no one else -- is that correct?

15 A Yes.

16 Q And you knew that you could bring other people to that

17 meeting. Isn't that fair?

18 A Yes.

19 Q It wasn't any unfairness to the fact that it was just you

20 and some other people?

21 A No, we're just so spread out all over the state, that I

22 was the one that was available that day.

23 Q Now I want you to look at Joint Exhibit J-1, which I think

24 is already in front of you, sir?

25 A Okay.

1 Q Do you see that?
2 A Yes, the April 4th letter?
3 Q Yes, let's -- April -- sir, had you had a chance to read
4 this?
5 A Yes.
6 Q Does this accurately reflect the discussion that you had
7 at the April 4th meeting?
8 A Yes.
9 Q Under BARSUA's constitution do I understand correctly that
10 it's the President that can direct the other Officers and bind
11 the Union?
12 A Yes, as long as the Executive Board is not in session.
13 Q Right -- and at this particular time the Executive Board
14 was not in session.
15 A No.
16 Q I'm going to hand you something that I've marked as R-3.
17 A Okay.
18 Q Which I'll indicate to you is the Constitution of BARSUA.
19 Is that accurate, sir?
20 A Yes.
21 (Respondent's R-3 identified.)
22 BY MR. RODRIGUEZ:
23 Q Is that the Constitution that BARSUA was operating under
24 in April of 2012?
25 A Yes, it was.

1 JUDGE GIANESSI: Any objection to R-3?
2 MR. RODRIGUEZ: No.
3 JUDGE GIANESSI: Received.
4 (Respondent's R-3 received.)
5 BY MR. MILLER:
6 Q Did you not also send an e-mail to Mr. Eagan on April 6th
7 asking for an extension and identifying that you weren't able
8 to get in touch or were having difficulty getting in touch with
9 the Complainants in this matter?
10 A Yes.
11 Q Were you given that extension?
12 A Yes.
13 Q Sir, I want you to look at Joint Exhibit J-2. Do you have
14 this? If you don't, I can show it to you.
15 A Okay.
16 Q Sir, the date on that -- well, there's no date on that
17 letter -- but I will represent to you that it was received and
18 we will have evidence that it was received by the Employer on
19 April 10th. Do you have any reason to disagree with that date?
20 A No.
21 Q Sir, I assume that Mr. Blackwell shared this with you.
22 A Yes.
23 Q I note that on behalf of the BARSUA Claimants Mr.
24 Blackwell made the claim for Mr. Hood for mileage.
25 A Yes.

1 (Joint Exhibit J-2 identified.)
2 BY MR. MILLER:
3 Q And was mileage one of the benefits that the Business
4 Agents received while they were employed by PSCOA?
5 A Yes.
6 Q And, in fact, in the Collective Bargaining Agreement,
7 which was later found by this Judge to be invalid in the
8 appendix it says that's part of the deal. Right?
9 A Yes.
10 Q And even after this agreement, it was still part of the
11 deal. Yes?
12 A Yes.
13 Q Sir, I'm going to ask you to take a look at Joint Exhibit
14 J-3. So, this letter is addressed to Mr. Blackwell, your Vice
15 President. I assume, sir, that -- well, I shouldn't assume. Is
16 it accurate that you also got a copy of this letter sometime
17 around April 3rd or April 12th?
18 A I'm not sure exactly when I did get a copy, but I did get
19 a copy of this letter.
20 (Joint Exhibit J-3 identified.)
21 BY MR. MILLER:
22 Q Is it fair to say that you got it sometime around the time
23 that it was issued?
24 A Yes.
25 Q I assume that Mr. Blackwell would have sent it to you.

1 A I believe that I received it from both sides, your side
2 and BARSUA -- PSCOA and BARSUA. I received a copy of it from
3 both.
4 Q Now in this letter the PSCOA addresses the issue that was
5 raised in Mr. Blackwell's letter about vacation leave and
6 things like that. He indicates in this letter that the vacation
7 leave -- they believe that there had been no effect because it
8 continues to accumulate in their regular job. Did you read
9 that, sir?
10 A Yes, it talks about -- yes, how it works is we have a
11 leave of absence without pay. And we actually accrue vacation
12 from the Department of Corrections as we're out on this leave.
13 JUDGE GIANESSI: When you're Business Agents you
14 continue to accrue that --
15 THE WITNESS: Yes, you accrue the vacation with the
16 Department of Corrections while you're on that leave absence.
17 BY MR. MILLER:
18 Q In fact, to that point, sir, without getting off on a
19 tangent with the indulgence of the Judge, is it accurate to
20 say, as you heard here today that Business Agents have the
21 ability with an agreement by the Commonwealth to go back to
22 their original institution when they stopped being Business
23 Agents. Is that right?
24 A Yes.
25 Q Would you agree with me that each one of these

1 Complainants was told and offered the right to go back to those
2 facilities?
3 A Yes, we were all told that when we first take the job. If
4 we're fired by the PSCOA we have the opportunity to go back to
5 the Department of Corrections, yes.
6 Q Now this letter on April 11th of 2012 from PSCOA to Mr.
7 Blackwell, which you also looked at, it says that the parties
8 are at impasse with regard to negotiations. Did you read that,
9 sir?
10 A Yes.
11 Q Did you have any reason to dispute the fact that you guys
12 were at impasse at that point?
13 A No, I believe -- Mr. Blackwell and I both talked about it
14 prior to -- and this was the final offer from the Employees.
15 That's my understanding from his discussion with them.
16 Q Did you think that you could bargain any further at this
17 point?
18 A We were told that this was what they were willing to
19 accept and that was it.
20 Q Did you ever dispute with PSCOA after April 11th that you
21 guys were at impasse? Did you ever send them a letter? Did you
22 ever say, "Look, let's have another meeting?"
23 A No.
24 Q Did you ever ask for additional bargaining?
25 A No.

1 Q Did you ever make any additional proposals?
2 A No.
3 Q Sir, to be honest between April of 2012 and September of
4 2012, when the elections were held and no one ran, did you do
5 anything really for the Union?
6 A Well, we were kind of in a holding status because there
7 was a decertification filed -- a petition filed to decertify
8 the Union. So nobody really wanted to do anything because we
9 didn't know whether we were going to be there or not.
10 Q Sir, did you undertake any official action whatsoever
11 between April and September?
12 A This was the last -- this meeting on April the 4th was the
13 last meeting that I had for BARSUA.
14 MR. MILLER: One second, Your Honor -- that's all
15 that I have on cross, Your Honor.
16 JUDGE GIANESSI: Any redirect?
17 MR. RODRIGUEZ: Just one question.
18 REDIRECT EXAMINATION
19 BY MR. RODRIGUEZ:
20 Q Mr. Sonnie, after PSCOA declared impasse did they contact
21 you ever after that to request bargaining or to engage in
22 bargaining?
23 A I believe the last discussion about the issue was Joint
24 Exhibit J-3. That was the last time that I think that we
25 discussed it. I think that was at least the last time that I

1 was involved in any discussion. I don't know if Mr. Blackwell
2 had any or not.
3 Q Did you receive any request or bargaining after that?
4 A No.
5 MR. RODRIGUEZ: No further questions.
6 JUDGE GIANESSI: Okay, you're excused.
7 THE WITNESS: Do you want me to lay these up here?
8 JUDGE GIANESSI: Yes, lay them there.
9 (Witness excused.)
10 MR. RODRIGUEZ: Your Honor, the General Counsel calls
11 Lawrence Blackwell.
12 Whereupon,
13 LAWRENCE BLACKWELL
14 having been first duly sworn, was called as a witness and
15 testified herein as follows:
16 JUDGE GIANESSI: Be seated, please. Give your name
17 and address to the Reporter and speak up.
18 THE WITNESS: Lawrence Blackwell: B-L-A-C-K-W-E-L-L;
19 106 Locust Street, Beach Creek, Pennsylvania, 16822.
20 DIRECT EXAMINATION
21 BY MR. RODRIGUEZ:
22 Q Mr. Blackwell, by whom are you employed?
23 A The PSCOA.
24 Q How long have you worked for the PSCOA?
25 A Approximately five years.

1 Q Have you ever been affiliated with a Union called Business
2 Agents Representing State Union Employees Association?
3 A Yes.
4 Q How?
5 A I was the Vice President in 2010 to 2012.
6 Q Do you remember when in 2012 you stopped being Vice
7 President?
8 A Whenever the election was that was just testified to -- I
9 believe that it was September 27th, 2012.
10 Q During your term as Vice President did you ever have an
11 opportunity to bargain with PSCOA over the effects of certain
12 discharges?
13 A Yes.
14 Q Do you recall which Employees' discharges they were?
15 A Yes, it was Lee Dyches, Patricia Hurd, Shawn Hood, John
16 Miller -- I think that's it. I'd have to look at the --
17 Q Was Bill Parke one of them?
18 A I don't remember that -- if it's in my letter.
19 Q What role did you play in bargaining?
20 A The only role that I played was that Mr. Sonnie could not
21 reach the effected Members and I had Shawn Hood's cell phone
22 number. So I contacted him. And I contacted Lee Dyches and told
23 them what the PSCOA was giving as an offer. They told me to
24 write this counteroffer, which I did, and sent to PSCOA.
25 Q Mr. Blackwell, if you could just take a look at the

1 document that's been marked as Joint Exhibit J-2.
2 A Yes.
3 Q Is that a copy of the letter of the counterproposal that
4 you sent?
5 A Yes.
6 Q Did you receive a response to that letter?
7 A I did.
8 Q Can you look at Joint Exhibit J-3?
9 A Yes.
10 Q Is that the response that you received to your
11 counterproposal?
12 A Yes.
13 Q Did you ever hear from the Employer regarding bargaining
14 over Dyches, Hood, Hurd, Miller, and Parke after receiving
15 their April 11th letter?
16 A No.
17 Q Did you ever try to contact the Employer to try and
18 bargain over those Employees after receiving the letter marked
19 Joint Exhibit J-3?
20 A No.
21 Q Why not?
22 A Because the letter, as I read it, this was it. I mean --
23 this was the -- you know -- we were at an impasse. If we gave
24 our offer, they said, "This is it." The PSCOA said, "This is
25 it."

1 I was left with nothing to bargain for.
2 Q Between April 10, 2012 to the end of your term, were you
3 willing to engage in bargaining on behalf of the Union on the
4 effects of the discharges of Dyches, Hurd, Miller, and Parke?
5 A Yes.
6 Q Would you have bargained with the Employer over these
7 discharges, if they had requested for you to do so?
8 A Yes.
9 MR. RODRIGUEZ: No further questions.
10 CROSS EXAMINATION
11 BY MR. MILLER:
12 Q Would you agree with me, Mr. Blackwell, that you had every
13 ability to ask for bargaining yourself after April 11th, after
14 reading Joint Exhibit J-3?
15 A I could have.
16 Q Yes?
17 A Yes.
18 Q So when you say that you would have engaged in bargaining,
19 is it a fair statement to say that you never went to PSCOA and
20 said, "Look, you said that we're at impasse, but I'd like to
21 keep talking"? Is that fair? That didn't happen?
22 A It did not happen, no.
23 MR. MILLER: One second, Your Honor -- Your Honor,
24 that's all the cross I have.
25 JUDGE GIANESSI: Any redirect?

1 MR. RODRIGUEZ: No, Your Honor.
2 (Witness excused.)
3 MR. RODRIGUEZ: Your Honor, the General Counsel calls
4 Bill Parke to the stand.
5 Whereupon,
6 WILLIAM PARKE
7 having been first duly sworn, was called as a witness and
8 testified herein as follows:
9 JUDGE GIANESSI: Be seated, please. Give your name
10 and address to the Reporter.
11 THE WITNESS: William R. Parke: P-A-R-K-E; 834
12 Highland Court, Mechanicsburg, Pennsylvania.
13 DIRECT EXAMINATION
14 BY MR. RODRIGUEZ:
15 Q Were you ever employed by the Pennsylvania State
16 Corrections Officer Association?
17 A Yes, I was.
18 Q What position did you hold with them?
19 A I was the Assistant Grievance Manager.
20 Q For how long?
21 A From May of 2002 until August of 2010.
22 Q Where did you report to work?
23 A The main headquarters in Harrisburg, Pennsylvania.
24 Q Do you know the address on that?
25 A It's on Front Street. I don't remember the address.

1 Q Can you tell me what your job duties were as a Grievance
2 Coordinator for the PSCOA?
3 A I oversaw the entire grievance and arbitration procedures.
4 I ran the joint committees, both the east, the west, the state
5 joint committees. I made sure that grievances were filed in a
6 proper -- according to the contract.
7 Q How much were you paid per week as a Grievance
8 Coordinator?
9 A The Association paid me $950 every two weeks.
10 Q Did you also receive a paycheck from somebody else?
11 A Yes, I did.
12 Q From who?
13 A The Commonwealth of Pennsylvania Department of
14 Corrections.
15 Q How much did you receive from them?
16 A It was $2630 every two weeks.
17 Q And that was all while you were a Grievance Coordinator.
18 A That is correct.
19 Q And do you know how the payment mechanism worked when you
20 were employed by PSCOA?
21 A The Commonwealth sent me a paycheck every two weeks for
22 the amount that I would earn as if I was working a 40 hour week
23 within the Correctional Facility. The Association sent me a
24 check every two weeks, which was a difference between that and
25 what the Association paid me. The Association would reimburse

1 the Commonwealth for the payment.
2 Q Were you an Hourly or a Salary Employee?
3 A I was an Hourly Employee for the Commonwealth of
4 Pennsylvania. I was salary for the Association.
5 Q How many hours per week did you work?
6 A For the Association?
7 Q Yes.
8 A I was supposed to work a minimum of 40. I generally worked
9 anywhere from 50 to 60.
10 Q Prior to your work as a Grievance Coordinator for PSCOA,
11 by whom were you employed?
12 A I was employed with the Commonwealth of Pennsylvania
13 Department of Corrections.
14 Q What position did you hold with the Commonwealth of
15 Pennsylvania?
16 A I was a Corrections Officer too.
17 Q For how long?
18 A I started in March of 1996. And through May of 2002 when I
19 came out to work with the Association.
20 Q Where did you work as a Corrections Officer?
21 A SCI Houtzdale in Clearfield County.
22 Q Where did you live as you worked as a Corrections Officer?
23 A In Houtzdale, Pennsylvania.
24 Q Is that also where you lived while you worked as a
25 Grievance Coordinator for the PSCOA?

1 A No, it's not.
2 Q Where did you live when you worked for the PSCOA?
3 A Mechanicsburg, Pennsylvania.
4 Q Is that where you still live now?
5 A Yes, it is.
6 Q Now can you tell me what your job were as a Corrections
7 Officer?
8 A I oversaw care, custody, and control of housing units. I
9 was a Housing Unit Sergeant, as well as, a Training Sergeant.
10 Q And where did you report to work?
11 A At SCI Houtzdale.
12 JUDGE GIANESSI: What is that again? Can you spell
13 that?
14 THE WITNESS: State Correctional Institution --
15 sorry.
16 JUDGE GIANESSI: At where?
17 THE WITNESS: In Houtzdale: H-O-U-T-Z-D-A-L-E,
18 Pennsylvania -- it's in Clearfield County.
19 BY MR. RODRIGUEZ:
20 Q Can you just describe what type of facility that is?
21 A It's a medium security facility. The housing units that I
22 oversaw were the level four housing units. I was a Relief
23 Housing Unit Sergeant. I would go in and relieve when the
24 regular Housing Unit Sergeants were not at work. I would run
25 the housing units at that time. On days when that wasn't

1 happening, I was a Training Sergeant.
2 Q So who lives at those housing units?
3 A Inmates.
4 Q And what type of facility did you report to when you were
5 in Harrisburg?
6 A I reported to the Association's Main Headquarters. It was
7 in their office, the main office.
8 Q How much were you paid per week when you worked at -- as a
9 Corrections Officer?
10 A It was $2630 every two weeks.
11 Q About how many hours per week did you work?
12 A As a Corrections Officer, 40.
13 Q And that was throughout the course of your employment with
14 them from '96 to 2002.
15 A That's correct.
16 JUDGE GIANESSI: Now when you worked in Houtzdale and
17 you say that you lived in Mechanicsburg at the time?
18 THE WITNESS: No, I lived in Houtzdale at the time,
19 sir. I lived approximately a mile from the prison.
20 JUDGE GIANESSI: Alright -- and then you moved to
21 Mechanicsville?
22 THE WITNESS: Mechanicsburg -- that is correct, sir.
23 JUDGE GIANESSI: And that is when you took the job
24 with Employer here?
25 THE WITNESS: I got hired by the Association and

1 moved from Houtzdale down to Mechanicsburg because my position
2 was going to be out of the main office.
3 JUDGE GIANESSI: In Harrisburg.
4 THE WITNESS: In Harrisburg -- at the time the main
5 office was at Camp Hill. And then later on it moved across the
6 river to Harrisburg.
7 JUDGE GIANESSI: So, when you moved, how close was
8 that to Harrisburg?
9 THE WITNESS: I'm --
10 MR. MILLER: I will stipulate that it's about ten
11 miles.
12 THE WITNESS: Yes, it's roughly ten miles.
13 JUDGE GIANESSI: Ten miles from Mechanicsburg to
14 Harrisburg.
15 THE WITNESS: To the PSCOA Headquarters in
16 Harrisburg.
17 JUDGE GIANESSI: Now how far away is that from your
18 former home in Houtzdale?
19 THE WITNESS: It's a two and a half hour drive, one
20 way.
21 JUDGE GIANESSI: Go ahead.
22 BY MR. RODRIGUEZ:
23 Q What are the differences, if any, between being a
24 Grievance Coordinator versus a Corrections Officer?
25 A As a Corrections Officer you deal with convicted felons on

1 a daily basis. As a Grievance Coordinator I did not deal with
2 inmates. I dealt with the Officers and Management of the
3 Commonwealth in disputes regarding the contract.
4 Q And how is that different?
5 A On a daily basis we are dealing with inmates and
6 maintaining care, custody, and control of them, overseeing them
7 and making sure there is inheritance to the rules. As far as
8 dealing with the grievances and all, it's pretty much trying to
9 enforce the contract as written.
10 Q How was it that you came to leave your Corrections Officer
11 job to go work for PSCOA?
12 A When the Association was first formed in 2001 I was one of
13 the applicants interviewed for a position as a Business Agent.
14 Of the original nine I was not selected.
15 Approximately two months after that process, Roy Pinto
16 contacted me and asked me if I might be interested in
17 interviewing for the position of Assistant Grievance
18 Coordinator. I told him that I would be.
19 I came down and interviewed with him and Don Canny and was
20 hired two weeks after that.
21 Q Did you have to quit your job with the Commonwealth of
22 Pennsylvania?
23 A I was put on an unpaid leave of absence at that time.
24 Q And who put you on an unpaid leave of absence?
25 A I requested an unpaid leave of absence. That was a

1 requirement for the position.
2 Q So it was granted by the Commonwealth?
3 A The Commonwealth granted it, yes.
4 Q At the time that you left your Corrections Officer job to
5 go and work as a Grievance Coordinator, did you have any idea
6 of how long you would be gone for?
7 A No.
8 Q When your employment with PSCOA ended, did you return to
9 work as a Corrections Officer?
10 A No, I did not.
11 Q Why not?
12 A In the intervening years we had adopted two special needs
13 kids. When I was contacted by the Department to go back, I had
14 just entered into another year lease because I hadn't been here
15 for the period of time that we had been.
16 I tried to get the Department to grant me the eight weeks
17 of leave that I had on the books so I could take time to get
18 out of the lease, find another home, transfer my kids to
19 school, try to get -- my two that are special needs have
20 special programs that they're in.
21 The Department would only grant me two weeks. And after a
22 lot of thought and discussion between my wife and myself, I
23 decided to retire at that time.
24 Q How far away was the job with the Commonwealth?
25 A It would have been a two and a half hour one way trip.

1 Q From where to where?
2 A From Mechanicsburg to Houtzdale.
3 Q Did you search for work after you retired from the
4 Commonwealth?
5 A Yes, I did.
6 Q Did you find work?
7 A I found part time employment, working at an assisted
8 living facility, while I was trying to find full time
9 employment.
10 Q And where was that? What was the name of that?
11 A The Bridges at Bent Creek.
12 Q How far away from Mechanicsburg was that?
13 A It's about a half mile from where I live.
14 Q Did you eventually find full time employment?
15 A Yes, I did.
16 Q When?
17 A It was April of 2011.
18 Q And where?
19 A For Holy Spirit Health System in Camp Hill.
20 Q After your -- during 2010, after you were discharged from
21 your employment with PSCOA, was there any period of time that
22 you were unavailable for work?
23 A No.
24 Q So you worked at the Assisted Living Facility continuously
25 from the time that you were discharged until the end of 2010.

1 A No.
2 Q Can you just explain that?
3 A In late November I developed what they determined to be
4 vertigo. And because the job that I was doing entailed
5 assisting elderly residents, a lot of lifting and all of that,
6 I was unable to do that. So, it was approximately a 3½ week
7 period that I was not working. They had a Receptionist, an
8 Administrative Assistant position that was coming open. And
9 once that came open, they moved me into that position.
10 JUDGE GIANESSI: So when was this -- in November of
11 what year?
12 THE WITNESS: Of 2010, sir.
13 JUDGE GIANESSI: So you did not work for November of
14 --
15 THE WITNESS: The end of November until -- it was
16 approximately a day or two after Christmas. It was about a 3½
17 week period of time because the job that was I was doing
18 entailed lifting residents and stuff. They would not allow me
19 to work until the other position.
20 JUDGE GIANESSI: Who wouldn't allow you to work?
21 THE WITNESS: The Employer.
22 JUDGE GIANESSI: Did you provide medical evidence to
23 the Employer?
24 THE WITNESS: Yes, I did.
25 JUDGE GIANESSI: Do you still have that condition?

1 THE WITNESS: I do have the vertigo, but it has not
2 effected me since that time. It's something that once you
3 develop, you will always have.
4 JUDGE GIANESSI: But you did go back to Patient Care?
5 THE WITNESS: Yes.
6 JUDGE GIANESSI: And you say that the vertigo doesn't
7 effect you?
8 THE WITNESS: In the positions that I have now, I'm
9 not required to lift Patients. So that is not something that --
10 JUDGE GIANESSI: So you -- okay.
11 THE WITNESS: They're concern with me was me lifting
12 a Patient, if I should suddenly become dizzy and drop them --
13 or not a Patient, a Resident.
14 JUDGE GIANESSI: Alright -- are you finished?
15 MR. RODRIGUEZ: Yes, Your Honor.
16 JUDGE GIANESSI: Cross.
17 CROSS EXAMINATION
18 BY MR. MILLER:
19 Q If I understand this correctly, would you agree with me
20 that when you took the job with PSCOA that there was an
21 agreement between PSCOA and the Commonwealth that anyone who
22 took a job as a Business Agent or an Employee of PSCOA could go
23 back to their original correctional facility? Would you agree
24 with that, sir?
25 A Yes.

1 Q And, sir, when you took the job with PSCOA would you agree
2 with me that wasn't a Civil Service Job?
3 A No, it was not.
4 Q And you didn't have any expectation that you would have
5 tenure with that job at PSCOA. Right?
6 A That's correct.
7 Q And if there was an election for Union Officers and there
8 was a new slate elected, there was always a possibility that
9 you could be separated from PSCOA and returned to your
10 facility. Is that right?
11 A That's correct.
12 Q And you knew that when you took the job in 2002. Fair?
13 A That's correct.
14 Q Now, if I understand correctly -- I thought that I
15 understood your testimony correctly -- that you leased a place
16 in Mechanicsburg?
17 A That's correct.
18 Q And did you maintain a home in Houtzdale?
19 A No, I did not.
20 Q When did you sell your home in Houtzdale?
21 A We rented. We did not own.
22 Q So there was nothing regarding the ownership of a house
23 that would have prevented you from going back to Houtzdale.
24 Right?
25 A That's correct.

1 Q You also indicated that after much discussion with your
2 wife, Margaret, that you made the decision to retire from
3 PSCOA. Right?
4 A From the Commonwealth of Pennsylvania.
5 Q Well, you also retired from PSCOA's plan too. Is that
6 right?
7 A That's correct.
8 Q And would you agree with me that your decision to retire
9 from both the Commonwealth and PSCOA -- well, let's break it
10 up. Your decision to retire from the Commonwealth was
11 voluntary. Isn't that correct?
12 A That is correct.
13 Q And you took a -- either a distribution or a partial
14 pension from both jobs. Isn't that right?
15 A That is correct.
16 Q You also testified that you wanted to get eight weeks
17 leave from your position with the Commonwealth after you had
18 left PSCOA. Do you remember that testimony, sir?
19 A Yes.
20 Q The entity that denied you that leave was not PSCOA. Is
21 that right?
22 A That's correct.
23 Q It was the Commonwealth. Fair?
24 A That is correct.
25 Q Sir, did you also know that you could ask for a transfer

1 between facilities?
2 A Yes.
3 Q Is there an SCI Facility in Camp Hill?
4 A Yes, there is.
5 Q And how far is Camp Hill from Mechanicsburg?
6 A Probably about 12 miles -- it might be a little less from
7 where I live. It might be closer to maybe nine from where I am.
8 Q Would you agree with me that you never asked to transfer
9 to Camp Hill?
10 A That's correct.
11 Q Sir, did you know that another one of the Claimants in
12 this case asked for a transfer and was granted it?
13 A I have no idea.
14 Q You testified about the differences between your job with
15 the Commonwealth as the Training Sergeant and Housing Sergeant,
16 if I heard you correctly. Right?
17 A Yes.
18 Q And the differences between your job at the PSCOA, which
19 was essentially an office job. Fair?
20 A Yes.
21 Q And I think that we all understand that. Sir, wouldn't you
22 agree with me that you knew in 2002, when you took the job with
23 PSCOA that you could be returned to a Correctional Facility
24 doing a Correctional Officer's job. Isn't that right?
25 A That's correct.

1 Q I just want to get this correct so that I understand. Let
2 me keep my voice up.
3 You separated from PSCOA in August of 2010. Is that right?
4 A Yes.
5 Q Because I have your distribution election and it's signed
6 August 25th. Am I right?
7 A That sounds about right -- it was right after the Western
8 Appoint Committee.
9 Q And you worked at the Bridges of Bent Creek from August or
10 so until November of 2010. Is that right?
11 A That's correct.
12 Q Then you had a 3½ week period where you were out of work
13 because your medical condition prevented you from doing work.
14 Right?
15 A Prevented me from doing the job that at the time I was
16 doing, yes.
17 Q Fair enough -- and then from January until April of 2011
18 you worked at Bent Creek at some other capacity. Is that right?
19 A That is correct.
20 Q And then in April of 2011 you started working with the
21 Holy Spirit Health System. Right?
22 A That is correct.
23 Q And what is your salary at Holy Spirit?
24 A When I was hired it was around 11.30 an hour. I don't
25 remember -- I make 14.92 with them now.

1 MR. MILLER: That's all the cross that I have for
2 now.
3 JUDGE GIANESSI: Any redirect?
4 MR. RODRIGUEZ: Yes, just a couple of questions.
5 REDIRECT EXAMINATION
6 BY MR. RODRIGUEZ:
7 Q Under what circumstances did you leave your employment
8 with PSCOA?
9 A I was relieved of my position due to the election results.
10 Q Did the Commonwealth of Pennsylvania offer you a transfer?
11 A No, they did not.
12 MR. RODRIGUEZ: No further questions.
13 MR. MILLER: Sir, I believe that I have some recross
14 that's within the scope of the redirect.
15 RECROSS EXAMINATION
16 BY MR. MILLER:
17 Q You testified earlier on cross examination that you knew
18 that if an election didn't go the way of the people that put
19 you into your job that you could be returned to the facility.
20 Isn't that right, sir?
21 A Yes.
22 Q And you knew that when you started this job in 2002. Is
23 that fair?
24 A That is correct.
25 Q So you knew that the whole intervening eight years.

1 MR. RODRIGUEZ: Objection -- this is asked and
2 answered, Your Honor.
3 JUDGE GIANESSI: Sustained.
4 MR. MILLER: I'll move on.
5 BY MR. MILLER:
6 Q Now with regard to the Commonwealth offering you a
7 transfer, sir, wouldn't you agree with me that it is the right
8 of a Correctional Officer, who takes an unpaid leave to go to
9 PSCOA, to demand that transfer, to get that transfer? The
10 Commonwealth doesn't have to offer it. That's not what's
11 required.
12 A My understanding is that an Officer can request a
13 transfer. There's nothing within our Collective Bargaining
14 Agreement or within the Commonwealth's Transfer Policy that
15 says that they would have to entertain, much less grant, a
16 transfer between facilities.
17 Q Would you agree with me that the opportunity was there for
18 you if you had asked for one?
19 A I could have requested one. That is correct.
20 Q And you knew about that before you made the decision to
21 retire?
22 A Yes.
23 MR. MILLER: That's all that I have on recross.
24 JUDGE GIANESSI: Alright.
25 MR. RODRIGUEZ: Nothing further, Your Honor.

1 JUDGE GIANESSI: You're excused.
2 (Witness excused.)
3 JUDGE GIANESSI: Anything else?
4 MR. RODRIGUEZ: No, Your Honor, we rest our case.
5 JUDGE GIANESSI: You rest -- okay -- very good.
6 (General Counsel rests.)
7 MR. MILLER: Could we take just five minutes?
8 JUDGE GIANESSI: Five -- we'll be in recess for five
9 minutes.
10 MR. MILLER: Thank you, Your Honor.
11 JUDGE GIANESSI: Off the record.
12 (Whereupon, at 11:29 a.m., a break was taken.)
13 JUDGE GIANESSI: On the record; 11:41 a.m.
14 Whereupon,
15 RICHARDSON TODD EAGEN
16 having been first duly sworn, was called as a witness and
17 testified herein as follows:
18 JUDGE GIANESSI: Be seated, please. Give your name
19 and address to the Reporter.
20 THE WITNESS: My full name is Richardson Todd Eagan:
21 E-A-G-E-N. My business address is 2705 North Front Street,
22 Harrisburg, Pennsylvania.
23 DIRECT EXAMINATION
24 BY MR. RODRIGUEZ:
25 Q Sir, are you an Attorney licensed to practice in

1 Pennsylvania?
2 A Yes, I am.
3 Q For how long have you been licensed to practice?
4 A 1997.
5 Q And even though you're under oath and you and I are trying
6 a case against each other tomorrow, I'll refrain from asking
7 you about your strategy for tomorrow and apply with today.
8 A I'd appreciate that.
9 (Laughter.)
10 BY MR. RODRIGUEZ:
11 Q Sir, what is your -- do you perform any services for the
12 Pennsylvania State Correctional Officers Association?
13 A Myself and my fellow partners and other Attorneys in
14 Lightman, Welby, and Stoltenberg -- we provide legal services -
15 - we're the main law firm for PSCOA.
16 Q And roughly for how long has that been the case?
17 A Since 2010.
18 Q Sir, I know that the Judge is aware of you since you
19 appeared before him in the underlying proceeding, did you
20 receive a Board Decision and Order dated March 23rd, 2012?
21 A Yes.
22 Q And did that Decision and Order require PSCOA to do
23 anything with regard to a effects bargaining?
24 A Yes.
25 Q And, sir, who handled effects bargaining, if anyone, for

1 PSCOA with BARSUA?
2 A I did as the Attorney. And then the three Vice Presidents
3 also were involved. The three Vice Presidents of PSCOA were
4 also involved in it.
5 Q Sir, did you engage in a meeting on April 4th, 2012 with
6 Mr. Sonnie, the President of BARSUA?
7 A Yes.
8 Q I'm going to hand you, I believe, I'm at R-4, Respondent's
9 R-4. Sir, do you recognize that document?
10 A Yes, I do.
11 Q This is a memorandum that I dictated to my file back in
12 April of 2012.
13 (Respondent's R-4 identified.)
14 BY MR. RODRIGUEZ:
15 Q And does it summarize anything?
16 A It summarizes the bargaining session that PSCOA and BARSUA
17 held on April 4th of 2012.
18 Q Does it note who was present?
19 A Yes, it does.
20 Q Is it an accurate -- to your mind at least -- is an
21 accurate restatement of what happened that day?
22 A Yes.
23 Q And by the way, prior to April 4th, 2012 was any request
24 made by BARSUA or any Officer from BARSUA for effects
25 bargaining?

1 A Not by an Officer and not what I would deem was a request
2 made by BARSUA. An individual Bargaining Unit Member, Patricia
3 Hurd, had contacted PSCOA regarding bargaining. And we
4 immediately instructed her that she was to have her Union
5 contact us. But nobody from -- at least no Officer or what we
6 deemed to be BARSUA contacted us before April 4th of 2012.
7 Q I'm going to ask you to look at -- I believe -- Joint
8 Exhibit J-1. I believe that it's a letter dated April 4th.
9 A Yes.
10 Q Who authored that letter?
11 A I did.
12 Q And previously Mr. Sonnie had been shown what I had marked
13 R-2. Do you see this document, sir?
14 A Yes.
15 Q Did you hand that document to him?
16 A At the April 4th bargaining session, yes.
17 Q Is that a true and correct copy of what you handed to him?
18 A Yes, it is.
19 Q Now, in your April 4th letter, in any part of that April 4th
20 letter do you address an extra week's credit for work that the
21 former Business Agents received?
22 MR. RODRIGUEZ: Objection, the letter speaks for
23 itself.
24 MR. MILLER: Fine -- do you know what? You're right.
25 The letter does speak for itself. It's prefect in that, and I

1 withdrawal the question.
2 BY MR. MILLER:
3 Q Did you ask Mr. Sonnie in your April 4th, 2012 meeting
4 whether or not the Business Agents had any effects bargaining
5 proposals of their own?
6 MR. RODRIGUEZ: Objection, leading.
7 JUDGE GIANESSI: Over --
8 MR. MILLER: I'm just asking --
9 JUDGE GIANESSI: Overruled.
10 THE WITNESS: Yes.
11 BY MR. MILLER:
12 Q And did they?
13 A No, Mr. Sonnie had indicated that he had received at that
14 point and time no offers and no direction on making any offers
15 from the individual Bargain Unit Members.
16 Q Did you make an offer to Mr. Sonnie at the April 4th
17 meeting?
18 A Yes, after I asked him whether or not he had any offers,
19 we caucused and I spoke with the individuals from PSCOA and the
20 decision was made at that time to make an offer to BARSUA
21 verbally that day.
22 Q Now did you receive what's been marked as J-2?
23 A Yes.
24 Q Incidentally, does J-2 ask for mileage on behalf of Shawn
25 Hood?

1 A Yes, Mr. Hood was requesting as part of his offer six
2 weeks of mileage that he claimed that he never received.
3 Q Was reimbursement for mileage one of the things that
4 Business Agents for PSCOA received as one of the moments of
5 employment?
6 A Yes.
7 Q Did the Business Agents also request vacation?
8 A Yes, they did.
9 Q Did you respond to this letter?
10 A Yes, I did on April 11th, 2012.
11 Q That's J-3?
12 A Yes.
13 Q What was the position of PSCOA with regard to, for
14 instance, the issue of vacation leave or leave time?
15 A The -- when we looked at BARSUA's request for the unused
16 vacation be paid back, we looked at it two fold. Number one,
17 you have to understand that these Employees when they're on
18 leave from the Department of Corrections, continue to
19 accumulate their leave benefits. In addition to that, when
20 they're at -- when they're on leave from PSCOA prior to 2010
21 when this offer was made, there was a very liberal leave policy
22 that was in place. It was solely where they just didn't keep
23 track of leave. So, number one that anybody was taking leave or
24 that they were accumulating leave.
25 So when BARSUA, the individual said, "We want unused

1 vacation to be paid back."

2 We thought it was an unreasonable request based on those

3 two things that I just stated. Number one, they had accumulated

4 leave with the Department of Corrections. And number two, quite

5 frankly they never got charged with leave when they were at

6 PSCOA. So -- even if we were going to consider what we can pay

7 them, we didn't believe they were entitled to it.

8 Q Mr. Eagen -- I meant to ask Mr. Parke this -- do you know

9 whether or not the Business Agents continued to receive pension

10 credit with the Commonwealth while they're working for PSCOA?

11 A Yes, that's part of the reason that Mr. Parke or one of

12 the benefits of what Mr. Parke had described as paid set up was

13 -- because the Commonwealth pays them a certain portion of

14 their salary, they get pension credit for that. Now PSCOA in

15 turn reimburses the Commonwealth. But that's why Mr. Parke had

16 the fortune of when he retired, he not only had a Department of

17 Corrections pension, he also had the benefit of a pension from

18 PSCOA separate and aside from that.

19 Q Did PSCOA ever declare impasse in bargaining over the

20 impact or the effects of separating the BARSUA Business Agents?

21 A Yes.

22 Q When?

23 A My letter dated April 11th, 2012, which I e-mailed to Mr.

24 Blackwell.

25 Q Following your letter of April 11th, did you receive any

1 communications from a BARSUA Officer saying, "Look, we'd like
2 to get back to the table and bargain" or any letter or any
3 communication disputing your declaration of impasse?
4 A No.
5 Q On the same date, April 11th, did you send a letter to Mr.
6 Thurman?
7 A Yes.
8 Q Is this the letter you sent, sir?
9 A Yes.
10 MR. MILLER: I'll introduce it as R-5, sir. I move
11 its admission.
12 (Respondent's R-5 identified.)
13 JUDGE GIANESSI: Do you also move R-4?
14 MR. MILLER: Yes.
15 JUDGE GIANESSI: Any objection?
16 MR. RODRIGUEZ: Your Honor, I just have some voir
17 dire on R-4 and then I'll get to R-5.
18 JUDGE GIANESSI: Okay, go ahead.
19 VOIR DIRE
20 BY MR. RODRIGUEZ:
21 Q Mr. Eagen, how long after the April 4 bargaining session
22 did you dictate this letter?
23 A The same day.
24 MR. RODRIGUEZ: And that's all that I have for voir
25 dire. As far as R-5, I don't think that Respondent has

1 established the relevance of this document.

2 JUDGE GIANESSI: What is the relevance?

3 MR. RODRIGUEZ: This is a letter to the Compliance

4 Officer. It doesn't have -- you know -- it's not part of the

5 bargaining between BARSUA and PSCOA.

6 JUDGE GIANESSI: What is the relevance of this?

7 MR. MILLER: It's just another documentation in which

8 they made clear that they had complied with the Board Order and

9 identified that they had declared impasse notifying both the

10 Board and PSCOA is cc'd, as well. So, I -- you know -- I can

11 withdrawal the -- you know what -- I can withdrawal, if

12 necessary. I'm not really going to proceed with it. It's really

13 more of a housekeeping issue.

14 JUDGE GIANESSI: Well, I'll let you withdrawal it.

15 (Respondent's R-5 withdrawn.)

16 JUDGE GIANESSI: I'll receive Respondent's R-4. Do

17 you have any objection to Respondent's R-4?

18 MR. RODRIGUEZ: No objection.

19 JUDGE GIANESSI: Receive Respondent's R-4.

20 (Respondent's R-4 received.)

21 DIRECT EXAMINATION

22 BY MR. MILLER:

23 Q Did you have occasion to interact or speak with Mr. Sonnie

24 or Mr. Blackwell after your letter at Joint Exhibit J-3,

25 anytime between say April and September of 2012?

1 A On many occasions.
2 Q At anytime did they take you aside and say, "Hey, this
3 whole Business Agent thing, this impact bargaining, this
4 effects bargaining, we need to start talking about that again"?
5 A No.
6 Q Did they occasion to do that -- opportunities?
7 A Yes.
8 Q More than once?
9 A Several times, yes.
10 MR. MILLER: I think that's all that I have on
11 direct.
12 MR. RODRIGUEZ: I have cross.
13 JUDGE GIANESSI: Go ahead.
14 CROSS EXAMINATION
15 BY MR. RODRIGUEZ:
16 Q Mr. Eagen, what was the substance of PSCOA's proposal
17 during the April 4 meeting?
18 A The substance was two-fold. Number one, we looked at the
19 Judge's Order of March and we looked at the two week period
20 that the Judge had suggested. And because we determined that
21 the Business Agents had received a week's pay when they weren't
22 working, we decided that would be the first component of the
23 offer.
24 The second part of the offer was based upon what we
25 believe to be an injustice, that these Business Agents, one of

1 them, for example, had received close to $79,000 in mileage
2 that we believe was clearly substantiated by a forensic audit
3 that we had done.
4 So, what we decided amongst -- you know -- in our
5 discussions was that we were going to pursue the mileage issue,
6 but that we were going to give the Business Agents, the ones
7 that were at least out of the five, there were four out of the
8 five that had reimbursement issues, we were going to give them
9 a credit of one week's pay against the mileage that I believe
10 that they were unjustly paid.
11 Q Were there any of the Claimants that PSCOA didn't believe
12 had fraudulent mileage reimbursements?
13 A Mr. Parke was one that didn't have the mileage issue.
14 Q So what was your proposal regarding Parke?
15 A The proposal for him was number one, the one week credit
16 to the pay. And quite frankly, the other part of it, right now,
17 escapes me why he wasn't include on that other part. I think we
18 overlooked that issue on him.
19 Q Did your offer that -- is there any difference between the
20 offer that you make in the April 11 letter and your offer at
21 the table on April 4th? Is the substance any different?
22 A No.
23 MR. RODRIGUEZ: I have no further questions.
24 MR. MILLER: I have no redirect.
25 JUDGE GIANESSI: Okay, you're excused.

1 THE WITNESS: Thanks.
2 MR. MILLER: I will call Shawn Smith.
3 (Witness excused.)
4 Whereupon,
5 SHAWN SMITH
6 having been first duly sworn, was called as a witness and
7 testified herein as follows:
8 JUDGE GIANESSI: Be seated, please. Give your name
9 and address to the Reporter.
10 THE WITNESS: Shawn J. Smith, address is 747 West
11 Water Street, Bellefonte, Pennsylvania, 16823.
12 DIRECT EXAMINATION
13 BY MR. MILLER:
14 Q Sir, what is your position of employment?
15 A I'm the IT guy for the PSCOA.
16 Q How long have you been employed in that capacity?
17 A Since 2005.
18 Q Sir, were you a Member of the BARSUA Union?
19 A Yes.
20 Q Were you a Member of that Union in 2012?
21 A Yes.
22 Q Sir, did you ever file a Decertification Petition with the
23 National Labor Relations Board?
24 A Yes, I did.
25 MR. RODRIGUEZ: Your Honor, I just want to object as

1 we have spoken before. it is the General Counsel's position
2 that the Decertification Petition and anything related to the
3 Decertification Petition is not relevant to the issue at hand,
4 which is what is the amount of money that the Claimant --
5 JUDGE GIANESSI: Well, but the Respondent's position
6 is that the back pay total at the point of the Decertification
7 Petition. Isn't that your position?
8 MR. MILLER: It's going to be our position.
9 JUDGE GIANESSI: So, I have to consider this. Now, it
10 may be that your position or General Counsel's position is that
11 no, the Decertification Petition does not tell back pay. But
12 it's certainly an issue in the case. And I will hear argument
13 about it. So, I'm going to permit questioning and inquiry into
14 this area.
15 And I also want to know what the Board Rules are on a
16 Decertification Petition: what is done and under what
17 circumstances -- I'm sure that it's in the Board Rules or in
18 the Case Handling Manual. But I want that all to be brought to
19 my attention so that I can assess this alleged defense.
20 MR. RODRIGUEZ: Then, Your Honor, if I could just
21 make a standing objection to anything related to the
22 Decertification Petition, so I don't have to keep objecting.
23 JUDGE GIANESSI: Of course -- go ahead.
24 BY MR. MILLER:
25 Q Sir, do you have the Petition in front of you?

1 A Yes, I do.
2 Q I'd like you to turn to the front page. Is that your
3 signature, sir?
4 A Yes, it is.
5 Q And if you look at the second page I see a list of names
6 and signatures?
7 A Yes.
8 Q Is that your signature on the second page?
9 A Yes, it is.
10 Q Did you assist in the gathering of these signatures?
11 A Yes, I did.
12 Q And when did you file this Petition?
13 A I'm pretty sure I believe that it was in January of 2012.
14 Q Did you ever receive any indication from the Board that
15 this was being processed?
16 A No, I did not.
17 Q Did you ever receive any indication from any Board -- did
18 you call? Did you say --
19 A I emailed. I can't remember the lady's name. It was
20 Dorothy I can remember. I can't remember after that. I have to
21 review my emails. I have to email her. And then we did talk. I
22 think that it was a few months thereafter, if she even got it.
23 They were on hold. The Labor Board was on hold until there
24 was some two other -- there was some legal work that were filed
25 prior to that, which they needed to handle before they would be

1 able to hear it.

2 JUDGE GIANESSI: Well, did you get any letters from

3 the Region?

4 THE WITNESS: I got one that there was -- I did get

5 one, but it was on hold. That was --

6 JUDGE GIANESSI: Do you have that letter?

7 THE WITNESS: No, I don't have it. I did get one that

8 it was on hold from Dorothy.

9 MR. MILLER: I don't have that letter.

10 JUDGE GIANESSI: Alright.

11 THE WITNESS: But that was in the beginning. It was

12 the first few months.

13 BY MR. MILLER:

14 Q So, sir, to your best recollection that would have been

15 February or March?

16 A I believe that it was February because it was right after

17 I filed it.

18 JUDGE GIANESSI: Alright, let me ask you this. I'm

19 sorry for interrupting. How many Business Agents total were in

20 this Union?

21 THE WITNESS: There is -- ten -- but there's eleven

22 now.

23 JUDGE GIANESSI: I mean -- how many at that time?

24 THE WITNESS: I'm pretty sure that there was ten,

25 plus the Office Staff.

1 JUDGE GIANESSI: There are eleven signatures on this.
2 THE WITNESS: Right.
3 JUDGE GIANESSI: Is that all of the Business Agents
4 that were represented?
5 MR. MILLER: Judge, may I clarify, sir?
6 JUDGE GIANESSI: Yes.
7 MR. MILLER: If you would look on the front page of
8 the Petition you would see 6(a), which is on the right hand
9 side, 'number of Employees in the Unit, 18'.
10 JUDGE GIANESSI: I see.
11 MR. MILLER: That includes -- and I don't think that
12 Mr. Rodriguez will dispute me on this -- both Business Agents
13 and Office Staff. Fair?
14 JUDGE GIANESSI: Right -- okay, but there are eleven
15 people that signed this.
16 MR. MILLER: Right.
17 MR. RODRIGUEZ: They needed 30% for the election and
18 that never happened.
19 MR. MILLER: Your Honor, if you look at 6(b), that's
20 exactly what it says -- 6(b) on the first page, right under
21 where the 18 is.
22 JUDGE GIANESSI: Yes, yes -- do you want to move or
23 put this in evidence?
24 MR. MILLER: I would move R-5's admission.
25 JUDGE GIANESSI: Any objection?

1 MR. RODRIGUEZ: The objection that we had, but -- you
2 know -- no other objection than what you've already overruled.
3 JUDGE GIANESSI: No doubt that this is an authentic
4 document that was filed with the Board. Right?
5 MR. RODRIGUEZ: No doubt about its authenticity.
6 JUDGE GIANESSI: Received.
7 (Respondent's R-5 identified and received.)
8 BY MR. MILLER:
9 Q Sir, when you testified earlier about a letter that you
10 got referring to this being on hold, is this the letter to
11 which you are referring?
12 A Yes, sir -- from memory.
13 JUDGE GIANESSI: Okay, should we mark this as
14 Respondent's R-6?
15 MR. MILLER: Yes, I move its admission.
16 JUDGE GIANESSI: Any objection?
17 MR. RODRIGUEZ: Not to its authenticity, Your Honor,
18 just objection to the relevance.
19 JUDGE GIANESSI: Overruled -- received.
20 (Respondent's R-6 identified and received.)
21 JUDGE GIANESSI: So, I take it that a hearing was
22 scheduled in this matter previously -- and -- I mean it's
23 obvious -- and that it was postponed. No reason is given in
24 this document.
25 MR. MILLER: One second, Your Honor.

1 BY MR. MILLER:
2 Q Sir, were you hear in March of 2013 for a hearing that was
3 rescheduled to this date?
4 A Yes.
5 Q From February of 2012 to March of 2013 had you ever heard
6 from the NLRB about your Petition?
7 A No.
8 JUDGE GIANESSI: You know -- I think I know where
9 you're going. And -- you know -- I'm not going to accept
10 testimonial evidence of what somebody from the NLRB said. What
11 I want is an official response to the Petition. If this is it,
12 and if there's no further response, that's -- you know --
13 that's sufficient. But I'm not going to go into testimony about
14 unofficial responses from people from the NLRB.
15 MR. MILLER: Well, Your Honor --
16 JUDGE GIANESSI: I take it that there's some Rules on
17 how Decertification Petitions are handled. And I would want
18 that to be submitted to me.
19 And I'd like Mr. Rodriguez to tell me right now, why
20 was this Decert Petition not processed?
21 MR. RODRIGUEZ: Your Honor, we have a letter right
22 here. I just received a copy of this because before today I
23 didn't know that this was going to be brought up. But --
24 JUDGE GIANESSI: Well, I'd like to see that.
25 MR. RODRIGUEZ: We have the letter with the

1 dismissal. Either you can put it in or I can put it in myself.
2 JUDGE GIANESSI: Yes, let's put it in as Respondent's
3 Exhibit R-7 because it comes right after your stuff and the
4 General Counsel doesn't think that any of this is relevant. And
5 my answer is I don't know.
6 (Respondent's R-7 identified.)
7 MR. MILLER: The only evidence -- Your Honor, if I
8 could respond to your Ruling just so I could spread it on the
9 record, if you don't mind?
10 JUDGE GIANESSI: Yes.
11 MR. MILLER: Without objection I would move R-7.
12 JUDGE GIANESSI: Alright -- I take it you have no
13 objection to authenticity?
14 MR. RODRIGUEZ: No.
15 JUDGE GIANESSI: Alright -- I will receive
16 Respondent's Exhibit R-7.
17 (Respondent's R-7 received.)
18 MR. MILLER: Your Honor, responding to the Ruling
19 that you've made, just so that I can spread it on the record
20 and make a Proffer of what I would have asked Mr. Smith. Mr.
21 Smith has a voicemail -- let's keep this on the record, please.
22 JUDGE GIANESSI: Yes, this is on the record.
23 MR. MILLER: Sir, this is on the record? Okay, good.
24 Mr. Smith has a voicemail from Mr. Thurman. He will
25 testify that he received it several days ago, immediately prior

1 to this hearing, asking him to withdrawal the Petition. And I
2 think that it goes to the -- in my estimation improper action
3 of the Board in this case. They didn't process this and then
4 they asked right before the hearing to withdrawal this because
5 it's an absolute fact issue in this case. If this Petition had
6 been acted on after the Board Decision came down in March, this
7 unit would be defunct earlier than September of 2012.
8 JUDGE GIANESSI: Well -- you know -- I'll accept your
9 Offer of Proof.
10 MR. MILLER: Sure.
11 JUDGE GIANESSI: But I still -- it's inadmissible
12 because it's --
13 MR. MILLER: Well, I understand --
14 JUDGE GIANESSI: In my view, it's inadmissible. But
15 what you can do is make any arguments -- and there may be cases
16 on this -- that this letter, R-7, which dismisses apparently
17 the Petition, is that what it does?
18 MR. RODRIGUEZ: Yes, Your Honor.
19 MR. MILLER: Dismisses contingent on the Ruling of
20 the Board.
21 MR. RODRIGUEZ: Contingent upon a request for review.
22 JUDGE GIANESSI: Well, whatever it says, you can make
23 your argument citing cases or Rules -- I mean this may be a
24 case of first impression, I don't know -- but I want some
25 authority for the notion that this should have been processed,

1 number one, and was improperly left alone. And I don't want the
2 words of a Board Agent. I want Case Authority.
3 And that -- and point number two -- and that this
4 would have totaled back pay from the inception -- I guess. So,
5 I'll receive Respondent's Exhibit R-7. It's a very interesting
6 argument. And I expect both sides to address it in their Briefs
7 because there may be Rules and cases that I don't know of
8 dealing with how Decertification Petitions are handled.
9 MR. MILLER: Your Honor, if I could consult with Mr.
10 Eagen for two seconds and then we can clear up this line of
11 inquiry.
12 JUDGE GIANESSI: Alright.
13 MR. MILLER: Your Honor, I'm finished with this
14 witness.
15 JUDGE GIANESSI: Alright -- do you have any cross
16 examination?
17 MR. RODRIGUEZ: Yes, just one question, Your Honor.
18 JUDGE GIANESSI: Okay.
19 CROSS EXAMINATION
20 BY MR. RODRIGUEZ:
21 Q Mr. Smith, can you take a look at Respondent's Exhibit R-
22 7.
23 MR. RODRIGUEZ: Your Honor, I think that you have the
24 only copy.
25 JUDGE GIANESSI: Okay.

1 MR. MILLER: Your Honor, before Mr. Rodriguez asks --
2 if he's going to ask this witness anything other than he
3 received it because he's not a Lawyer and he can't really
4 interpret it.
5 JUDGE GIANESSI: Well, let's see.
6 BY MR. RODRIGUEZ:
7 Q Mr. Smith, did you receive this letter?
8 A I don't remember receiving this letter, no.
9 Q Look at the second page. You still don't recall receiving
10 that letter?
11 A No, I don't.
12 Q Can you look at the first page of that?
13 A Yes, I did that the first time.
14 Q Can you tell who that's addressed to?
15 A It's addressed to me.
16 Q And did you -- and the address that's listed under your
17 name, is that your address?
18 A Yes, that's what I said when I started here.
19 JUDGE GIANESSI: Anything else?
20 MR. RODRIGUEZ: Nothing further.
21 MR. MILLER: I have nothing further for this witness.
22 JUDGE GIANESSI: Okay, you're excused.
23 (Witness excused.)
24 JUDGE GIANESSI: Now before we go on, I just want to
25 make one clarification for the record. There was a document

1 identified as Respondent's Exhibit R-5. That's a letter that
2 was withdrawn.
3 MR. MILLER: Correct.
4 JUDGE GIANESSI: And there was a new Respondent's
5 Exhibit R-5 that was the Decertification --
6 MR. MILLER: That's the Petition.
7 JUDGE GIANESSI: -- the Decertification Petition that
8 was admitted into evidence.
9 MR. MILLER: Yes, right -- and then R-6 is the letter
10 from Dorothy Murdock.
11 JUDGE GIANESSI: Right -- and R-7 is the letter to
12 Mr. Smith.
13 MR. MILLER: Actually, I have that as R-6, Your
14 Honor.
15 JUDGE GIANESSI: No, R-6 is an indefinite
16 postponement of hearing, ordered by the Region.
17 MR. MILLER: You're quite right, Your Honor. I
18 apologize.
19 JUDGE GIANESSI: Okay, but I just want to make clear
20 that this letter, which is in front of me -- and I don't want
21 it in front of me -- is --
22 MR. MILLER: It's withdrawn.
23 JUDGE GIANESSI: -- withdrawn.
24 MR. MILLER: Yes.
25 JUDGE GIANESSI: Okay, next witness.

1 MR. MILLER: Your Honor, I don't have any other
2 witnesses.
3 JUDGE GIANESSI: Okay -- very good.
4 MR. RODRIGUEZ: Your Honor, we just have one rebuttal
5 witness and just one question.
6 JUDGE GIANESSI: Alright.
7 MR. MILLER: Can I ask for an offer of who the
8 witness is?
9 JUDGE GIANESSI: Well -- okay, go ahead and do it.
10 Who's the witness?
11 MR. RODRIGUEZ: Essentially, the Respondent put on
12 now that it's -- it's Mr. Blackwell.
13 JUDGE GIANESSI: Okay.
14 MR. RODRIGUEZ: And Respondent put on in evidence
15 about -- you know -- regarding -- you know -- its position on
16 the Union's request for unused and unpaid vacation.
17 JUDGE GIANESSI: Alright -- call the witness. Mr.
18 Blackwell?
19 Whereupon,
20 LAWRENCE BLACKWELL
21 having been previously duly sworn, was recalled as a witness
22 and testified herein as follows:
23 DIRECT EXAMINATION
24 BY MR. RODRIGUEZ:
25 Q Mr. Blackwell, can you describe the Union's

1 counterproposal to PSCOA regarding the Claimants?
2 A The counterproposal came straight from Shawn Hood and he
3 said, "Make this our counterproposal."
4 He told me exactly what's written in the letter that's
5 right there. The one that says 'the Claimants'. That's what
6 they wanted. That's what he suggested that I put.
7 JUDGE GIANESSI: Well, did you talk to anybody
8 besides Hood?
9 THE WITNESS: I did not because I had no other
10 numbers to contact anyone.
11 BY MR. RODRIGUEZ:
12 Q Do you know whether Employees previously discharged from
13 PSCOA usually received unused leave?
14 A I believe -- no.
15 Q You don't know or they did not?
16 A I don't believe that they did. What Mr. Eagen described is
17 true. I'm an Agent still currently. I'm accruing leave. And
18 tomorrow if I took a day's leave, it didn't come off my leave
19 balance.
20 Q Okay.
21 MR. RODRIGUEZ: Nothing further.
22 JUDGE GIANESSI: You are excused. I'm not sure that I
23 understand this, but the Briefs will make it clear. I'm sure.
24 Alright, there's nothing further from either party?
25 MR. MILLER: No, Your Honor.

1 MR. RODRIGUEZ: No, Your Honor.

2 JUDGE GIANESSI: Okay, the case is submitted. I would
3 like Briefs on -- let's see -- today is April 14th. Let's make
4 it an even day. let's say May 15th I will expect Briefs and
5 obviously the issues were stated earlier: whether there was an
6 impasse; whether the Respondent made it a condition of an
7 agreement because I'm not sure if that's -- I'm not sure about
8 that -- whether they made it a condition of the agreement to
9 have the mileage offset -- and whether that was a permissive or
10 mandatory subject.

11 Then there's the issue of when the back pay total,
12 either at impasse or on September 28th, when the Union became
13 defunct or at some other period because of the Decert Petition
14 not being handled. And as to that, I really need a full
15 briefing on both sides.

16 I know that you say that it's not relevant, the
17 General Counsel. But there must be some Rules on how to handle
18 Decert Petitions and I would -- as a matter of fact, I order
19 you to brief the General Counsel's position -- the Region's
20 position on this.

21 And of course, for the Respondent, whatever Case Law
22 is available or Rules or Case Handling Manual, you can make
23 your argument. But you'll have to assume that I know nothing
24 about how Decertification Petitions are handled or how they
25 effect in this unusual circumstance the totaling of back pay.

1 And then, of course, there's the issue of Parke,
2 whether he failed to mitigate because of not going back to his
3 original Employer.
4 So, it's an interesting case. I was here at the
5 beginning, and I suppose I'll be here at the end.
6 MR. MILLER: Thank you, Your Honor.
7 MR. RODRIGUEZ: Thank you, Your Honor.
8 JUDGE GIANESSI: Off the record.
9 (Whereupon, at 12:21 p.m. the above entitled matter was
10 closed.)
11

1

C E R T I F I C A T E

This is to certify that the attached proceedings done before the NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION

Respondent,

And

BUSINESS AGENTS REPRESENTATIVE STATE UNION EMPLOYEES ASSOCIATION

Charging Party.

Case No.: 4-CA-037648, 4-CA-037649, 4-CA-037652

Date: Monday, April 14, 2014

Place: Philadelphia, Pennsylvania

Were held as therein appears, and that this is the original transcript thereof for the files of the Board

Official Reporter

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION and BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	Cases 04-CA-037648, 04-CA-037649 and 04-CA-037652

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

General Counsel's Exhibit No. 1	(a)	ALJ's Decision dated 3/17/2011
	(b)	Board Decision 3/23/2012
	(c)	Compliance Specification and Notice of Hearing dated 12/3/2013
	(d)	Affidavit of Service of 1(c) dated 12/3/2013
	(e)	Answer to 1(c) received 12/24/2013
	(f)	Order Changing Time of Hearing dated 2/26/2014
	(g)	Affidavit of Service of 1(f) dated 2/26/2014
	(h)	Order Rescheduling Hearing to 4-14 dated 3/17/2014
	(i)	Affidavit of Service of 1(h) dated 3/17/2014

EXHIBIT NO. GC 1 RECEIVED ✓ REJECTED
CASE NO. 4-CA-037648 CASE NAME P.S.C.O.A.
NO. OF PAGES DATE 4/14/15 REPORTER

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION

and

Cases 04-CA-037648, 04-CA-037649 and 04-CA-037652

BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on March 18, 2014, I served the above-entitled document(s) by **fax and regular mail** upon the following persons, addressed to them at the following addresses:

Roy Pinto, President
Pennsylvania State Corrections Officers Association
2421 North Front Street
Harrisburg, PA 17110-1110

Michael McAuliffe Miller, Esquire
Eckert Seamans Cherin & Mellott LLC
213 Market Street, Floor 8
Harrisburg, PA 17101-2141

March 18, 2014
Date

Diane Alessandrini
Name

/s/ Diane Alessandrini
Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

Cases 04-CA-037648
04-CA-037649 and
04-CA-037652

BUSINESS AGENTS REPRESENTING STATE
UNION EMPLOYEES ASSOCIATION

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from **March 17, 2014 at 10:00 a.m. to April 14, 2014 at 10:00 a.m.** in the Regional Office, 615 Chestnut Street, Suite 710, Philadelphia, PA 19106. The hearing will continue on consecutive days until concluded.

Signed at Philadelphia, Pennsylvania this 18th day of March, 2014.

Harold A. Maier

HAROLD A. MAIER
Acting Regional Director
Region Four

GENERAL COUNSEL'S EXHIBIT 16

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION and BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	Cases 04-CA-037648, CA-037649 and CA-037652 Date ofMailing: February 26, 2014

AFFIDAVIT OF SERVICE OF: ORDER CHANGING TIME OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above, I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

MICHAEL McAULIFFE MILLER ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT LLC
213 MARKET STREET
FLOOR 8
HARRISBURG PA 17101

ROY PINTO PRESIDENT
PA STATE CORRECTIONS
OFFICERS ASSOCIATION
2421 N FRONT STREET
HARRISBURG PA 17110

LAWRENCE BLACKWELL VICE PRESIDENT
BUSINESS AGENTS REPRESENTING STATE
UNION EMPLOYEES ASSOCIATION
106 LOCUST STREET
BEECH CREEK PA 16822

Subscribed and sworn to before me this 26th day of February, 2014	Designated Agent /s/ Diane Alessandrini NATIONAL LABOR RELATIONS BOARD

ORIGINAL COURT EXHIBIT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

Cases 04-CA-037648,
04-CA-037649 and
04-CA-037652

BUSINESS AGENTS REPRESENTING STATE
UNION EMPLOYEES ASSOCIATION

ORDER CHANGING TIME OF HEARING

IT IS HEREBY ORDERED that the hearing in the above matter scheduled to begin on March 17, 2014, will begin at ***10:00 a.m.*** and continue on consecutive days thereafter, at the National Labor Relations Board, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania.

Signed at Philadelphia, Pennsylvania this 26th day of February, 2014.

DENNIS P. WALSH
Regional Director, Fourth Region
National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	)	Cases 04-CA-037648 04-CA-037649 *and* 04-CA-037652
and	)	
BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	)	
Respondent.	)	

ANSWER TO COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

COMES NOW, the Pennsylvania State Correctional Officers Association (the "PSCOA") and within the time frame set forth by the Board Rules and Regulations, files this Answer to the Complaint filed by the Regional Director in the above cited case:

INTRODUCTORY STATEMENT

It is admitted that the National Labor Relations Board (the Board) issued a Decision and Order (358 NLRB No. 19). The provisions of that Decision and Order speak for themselves but, as the Introductory Statement itself provides, the payment period would end, inter alia, when the parties reached a bona fide impasse in effects bargaining.

PSCOA avers and contends that it immediately initiated effects bargaining with the members of the BARSUA unit with whom the Board indicated it was required to bargain. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA identified the sum which it intended to pay as a *Transmarine* remedy and offset that

GENERAL COUNSEL'S EXHIBIT 1(E)

against previously improperly paid benefits already received by the individuals named in the Board's previous order.

TRANSMARINE BACKPAY PERIOD

1(a) Denied as stated. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(b) Admitted. By way of further answer, PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(c) Denied as stated. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(d) Denied as stated. It is admitted that the term of the BARSUA officers expired on September 28, 2012. By way of further answer, PSCOA avers that BARSUA was essentially defunct and disclaimed any bargaining obligation prior to September 28, 2012. PSCOA bargained to impasse with the Business Agents Representing State Union Employees

Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(e) Denied as stated. By way of further answer, PSCOA avers that BARSUA was essentially defunct and disclaimed any bargaining obligation prior to September 28, 2012. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

TRANSMARINE GROSS BACKPAY CALCULATION

2(a) Admitted.

2(b) After reasonable investigation, PSCOA does not possess information sufficient to form a belief as to the truth of the matters asserted in Paragraph 2(b) and, as such, the assertions are all denied.

2(c) After reasonable investigation, PSCOA does not possess information sufficient to form a belief as to the truth of the matters asserted in Paragraph 2(c) and, as such, the assertions are all denied.

2(d) Denied. Following his layoff, Mr. Parke left the employment of the Commonwealth of Pennsylvania even though employment was available at his prior position as a correctional officer for the Commonwealth of Pennsylvania. Every other person identified by the Board did return to their position as a correctional officer for the Commonwealth of

Pennsylvania. Mr. Parke's personal decision to leave his employment with the Commonwealth of Pennsylvania would have rendered him unable to be a member of BARSUA or PSCOA since all members of PSCOA are correctional officers and all the putative members of BARSUA require that an individual be selected from the ranks of correctional officers.

Thus, any claim for *Transmarine* backpay should be cut off by Mr. Parke's decision to leave the only position that would permit him to continue as a Correctional Officer and BARSUA member. The use of his interim earnings at his position at the Bridges at Bent Creek which occurred after he left the employment of the Commonwealth are entirely irrelevant.

INTERIM EARNINGS

3(a) PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order. As PSCOA has indicated in its Answer, Mr. Parke's decision to leave the employment of the Commonwealth should end any obligation for PSCOA to pay him any *Transmarine* remedy.

3(b) After reasonable investigation, PSCOA does not possess information sufficient to form a belief as to the truth of the matters asserted in Paragraph 3(b) and, as such, the assertions are all denied.

TRANSMARINE NET BACKPAY CALCULATION

4(a) Denied. PSCOA avers and contends that it bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board

itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

4(b) Denied. PSCOA avers and contends that it bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

4(c) Denied. PSCOA avers and contends that it bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

[Remainder of page intentionally left blank]

SUMMARY

PSCOA has already indicated its belief that it has complied with the Board's Order. In addition, it is a material fact that BARSUA is no longer a functioning union. PSCOA has been informed via affidavit that there are no members and no officers of BARSUA extant. As such, even if—only arguendo—PSCOA would be compelled to revisit the issue of impasse as the Regional Director contends, there is and was no one with whom to bargain. As such, PSCOA seeks an order dismissing the Compliance Specification as it contends that it has reached a bona fide impasse and therefore complied with the Board's Order.

Respectfully submitted,

By: _____

Michael McAuliffe Miller
Attorney I.D. No. 78507
ECKERT SEAMANS CHERIN & MELLOTT, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-7174

Attorney for PSCOA

Dated: December 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2013, a true and correct copy of the foregoing *Answer to Compliance Specification and Notice of Hearing* was served via Federal Express, upon the following:

Lawrence Blackwell, Vice President
Business Agents Representing State Union
Employees Association
106 Locust Street
Beech Creek, PA 16822

Henry R. Protas
NLRB, Region Four
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Michael McAuliffe Miller

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION and BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	Cases 04-CA-037648, CA-037649 and CA-037652 Date of Mailing: December 3, 2013

AFFIDAVIT OF SERVICE OF: Compliance Specification and Notice of Hearing

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid certified mail upon the following persons, addressed to them at the following addresses:

MICHAEL McAULIFFE MILLER ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT LLC
213 MARKET STREET
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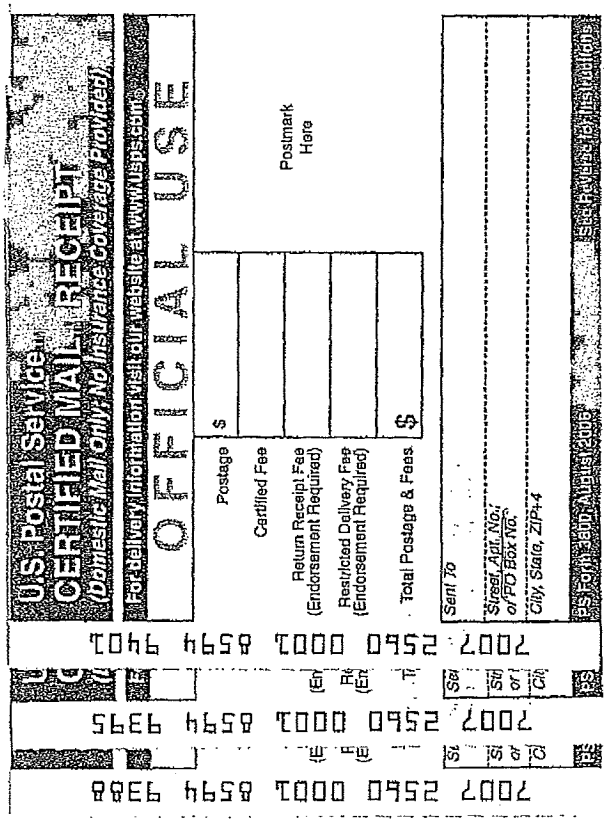
HARRISBURG PA 17101
(C. 7007 2560 0001 8594 9401 RRR)

ROY PINTO PRESIDENT
PA STATE CORRECTIONS
OFFICERS ASSOCIATION
2421 N FRONT STREET
HARRISBURG PA 17110
(C. 7007 2560 0001 8594 9395 RRR)

LAWRENCE BLACKWELL VICE PRESIDENT
BUSINESS AGENTS REPRESENTING STATE
UNION EMPLOYEES ASSOCIATION
106 LOCUST STREET
BEECH CREEK PA 16822
(C. 7007 2560 0001 8594 9388 RRR)

Subscribed and sworn to before me this **3rd day of December, 2013**	Designated Agent /s/Diane Alessandrini **NATIONAL LABOR RELATIONS BOARD**

GENERAL COUNSEL'S EXHIBIT 16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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

Cases 04-CA-037648,
04-CA-037649 and
04-CA-037652

BUSINESS AGENTS REPRESENTING STATE
UNION EMPLOYEES ASSOCIATION

COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

On March 23, 2012, the National Labor Relations Board (the Board) issued its Decision and Order (358 NLRB No. 19), directing Pennsylvania State Corrections Officers Association (Respondent), its officers, agents, successors, and assigns, to take certain affirmative action, including bargaining with Business Agents Representing State Union Employees Association (the Union) concerning the effects of Respondent's layoff of its former employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke (herein collectively called the claimants and individually called Dyches, Hood, Hurd, Miller and Parke). The Board also directed Respondent to pay the claimants the normal wages they received when they were in Respondent's employ. The payment period commenced five (5) days after the issuance of the Board Order and continued until the earliest of the following conditions: (1) the date that Respondent bargained to agreement with the Union over the effects of the layoffs; (2) the date a bona fide impasse in effects bargaining occurred; (3) the failure of the Union to request bargaining within five business days after receipt of the Board's Order, or to commence negotiations within five business days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. The Board further ordered that, in no event, would the sum paid to any of the claimants exceed the amount that any of them would have earned as wages from the date of their layoffs to the time they each secured equivalent employment; nor would the sum paid to the claimants be less than they would have earned for a two week period as their normal wages when they last were in Respondent's employ, plus interest, herein called the *Transmarine*[1] backpay. A controversy having arisen as to the amount of *Transmarine* backpay due under the Board's Order, the undersigned Regional Director for the Fourth Region of the Board, pursuant to authority conferred upon him by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges that the backpay owing to unit employees is as follows:

[1] *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

GENERAL COUNSEL'S EXHIBIT 16

TRANSMARINE BACKPAY PERIOD

I. (a) The duration of the *Transmarine* backpay period was 26 weeks.

(b) The *Transmarine* backpay period commenced on March 28, 2012, five days after the Board Order issued.

(c) None of the conditions specified in the Board Order occurred.

(d) The *Transmarine* backpay period ended on September 28, 2012, the approximate date on which the Union became defunct and was no longer able to bargain.

(e) In assessing whether the claimants obtained equivalent employment, the 26-week *Transmarine* backpay period was applied in full to the 26-week period following the claimants' layoffs on August 20, 2010.

TRANSMARINE GROSS BACKPAY CALCULATION

II. (a) Based on records furnished by Respondent, the bi-weekly earnings of Dyches, Hood, Hurd, Miller and Parke at the time of their layoffs were, respectively, $3099.48, $3194.52, $3145.25, $2860.57 and $3158.12.[2]

(b) The claimants' weekly earnings were calculated by dividing the amounts in sub-paragraph (a) by two.

(c) With the exception of Parke, the claimants' gross backpay was calculated for the entire second and third quarters of 2012 by multiplying the claimants' weekly earnings by 13 weeks for each quarter.

(d) Due to a medical condition, Parke was unavailable to work from November 4, 2010 to December 27, 2010. As a result, this eight week period was excluded from his *Transmarine* backpay period. For the second and third quarters of 2012, Parke's weekly earnings were multiplied by 11 and 7, respectively.

INTERIM EARNINGS

III. (a) Interim earnings were the wages the claimants earned from interim employment during the 26-week period following their layoffs. Interim earnings also included one week of severance pay that Respondent paid to the claimants at the time of their layoffs.

---

[2] The claimants were on leaves of absence from their Corrections Officers jobs with the Commonwealth of Pennsylvania (the Commonwealth) while they were employed by Respondent. By agreement with the Commonwealth, a portion of their pay was paid by the Commonwealth and the remainder was paid directly by Respondent, but Respondent reimbursed the Commonwealth for the portion it paid. Their bi-weekly earnings included both portions of pay.

(b) The first 13 weeks of the claimants' interim earnings were applied to the second quarter of 2012, and the second 13 weeks of the claimants' interim earnings were applied to the third quarter of 2012.

TRANSMARINE NET BACKPAY CALCULATION

IV. (a) The claimants' quarterly net backpay is the difference between their calendar quarter gross backpay and their calendar quarter interim earnings.

(b) The claimants' total net backpay is the sum of their quarterly net backpay.

(c) The backpay calculations for Dyches, Hood, Hurd, Miller, and Parke are set forth in Appendices A, B, C, D and E, respectively.

SUMMARY

V. Summarizing the facts, figures and calculations specified herein, the obligation of Respondent to pay *Transmarine* backpay to the claimants pursuant to the Board's Order will be discharged by payment to them of all amounts specified in Appendices A through E, plus interest accrued on those amounts to the date of payment.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an Answer to the Compliance Specification. The answer must be **received by this office on or before December 24, 2013, or postmarked on or before December 23, 2013**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this office and serve a copy of the Answer on each of the other parties.

The Answer also may be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification of the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such Answer be signed and sworn to by Respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the Answer

need to be transmitted to the Regional Office. However, if the electronic version of the Answer to the Compliance Specification is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission.

As to all matters set forth in the Compliance Specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the Answer must state the basis for any disagreement with any allegations that are within Respondent's knowledge, and the Answer must set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no Answer is filed, or if the Answer is filed untimely the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Compliance Specification are true. If the Answer fails to deny allegations of the Compliance Specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the Compliance Specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **11:00 a.m.** on **March 17, 2014**, and on consecutive days thereafter until concluded, a hearing will be conducted in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Compliance Specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 3rd day of December, 2013.

DENNIS P. WALSH
Regional Director, Fourth Region
National Labor Relations Board

Exhibit A: Lee Dyches' Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings Commonwealth of Pennsylvania	Net Backpay
2nd/2012	13	$1,549.74	$20,146.62	$14,825.39	$5,321.23
3rd/2012	13	$1,549.74	$20,146.62	$15,505.15	$4,641.47
					$9,962.70

Exhibit B: Shawn Hood's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings Commonwealth of Pennsylvania	Net Backpay
2nd/2012	13	$1,597.26	$20,764.38	$17,086.90	$3,677.48
3rd/2012	13	$1,597.26	$20,764.38	$20,326.77	$437.61
					$4,115.09

Exhibit C: Patricia Hurd's Backpay Calcu' 'ons

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings Commonwealth of Pennsylvania	Net Backpay
2nd/2012	13	$1,572.63	$20,444.19	$13,789.62	$6,654.57
3rd/2012	13	$1,572.63	$20,444.19	$15,001.20	$5,442.99
					$12,097.56

Exhibit D: John Miller's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Commonwealth of Pennsylvania Interim Earnings	Net Backpay
2nd/2012	13	$1,430.29	$18,593.77	$13,571.85	$5,021.92
3rd/2012	13	$1,430.29	$18,593.77	$14,885.72	$3,708.05
					$8,729.97

Exhibit E: Bill Parke's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings The Bridges at Bent Creek	Net Backpay
2nd/2012	11	$1,579.06	$17,369.66	$3,932.19	$13,437.47
3rd/2012	7	$1,579.06	$11,053.42	$731.50	$10,321.92
					$23,759.39

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Pennsylvania State Corrections Officers Association *and* Business Agents Representing State Union Employees Association. Cases 04–CA–037648, 04–CA–037649, and 04–CA–037652

March 23, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND GRIFFIN

On March 17, 2011, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Acting General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Pennsylvania State Corrections Officers Association, Harrisburg, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Business Agents Representing State Union Employees Association (BARSUEA) by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity to bargain about those changes and their effects.

(b) Refusing to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards, and supervisors within the meaning of the Act.

(b) On request, bargain with BARSUEA with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke.

(c) Within 14 days from the date of this order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

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[1] The Acting General Counsel mistakenly contends that the judge failed to find an effects-bargaining violation with respect to employee Sonya Corish's discharge. It is clear from the judge's decision that he did find that violation.

[2] We adopt the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to give effect to and repudiating a July 19, 2010 collective-bargaining agreement (the July 19 agreement) negotiated and executed by the Charging Party and the Respondent's outgoing president, Donald McNany. Contrary to the judge, we find that McNany remained president until his successor, Roy Pinto, was sworn in on July 20, 2010. Nevertheless, we agree with the judge that, pursuant to the Respondent's constitution, McNany lacked actual authority to bind the Respondent to the July 19 agreement, absent approval from the Respondent's executive board.

We also agree with the judge that McNany lacked apparent authority to bind the Respondent to the July 19 agreement. Apparent authority "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the agent to perform the acts in question." *Corner Furniture Discount Center*, 339 NLRB 1122, 1122 (2003). The Acting General Counsel contends that the Charging Party would reasonably have believed, based on McNany's status and duties as president, that McNany had authority to enter into the July 19 agreement without executive-board approval. We disagree. The July 19 agreement was negotiated by McNany and Shawn Hood, the Charging Party's president and bargaining agent. Hood has been an active member of the Respondent since its founding in 2001, and had, before his termination, represented the Respondent as a business agent since 2003. Hood was involved in the Respondent's internal politics and actively supported McNany in his 2010 campaign for reelection. Hood also admitted to being familiar with at least some portions of the Respondent's constitution. Based on Hood's knowledge of, and involvement in, the Respondent's inner workings, we are satisfied that he did not reasonably believe that McNany had authority to bind the Respondent to the July 19 agreement.

[3] We shall modify the judge's recommended Order to conform to the violations found and to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

In accordance with his dissenting view in *Kadouri International Foods*, 356 NLRB No. 148, slip op. at 1 fn. 1 (2011), Member Hayes would delete that portion of the remedy requiring that the minimum backpay due employees should not be less than 2 weeks' pay, without regard to actual losses incurred.

GENERAL COUNSEL'S EXHIBIT 16

(d) Make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section of the judge's decision.

(e) Within 14 days from the date of this order, remove from its files any reference to Corish's unlawful discharge and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Pay its discharged business agents, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke, their normal wages for the period set forth in the remedy section of the judge's decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(h) Within 14 days after service by the Region, post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. March 23, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Business Agents Representing State Union Employees Association (BARSUEA) by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity to bargain about those changes and their effects.

WE WILL NOT refuse to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time business agents and support staff employed by us, excluding all other employees, guards, and supervisors within the meaning of the Act.

WE WILL, on request, bargain with BARSUEA with respect to the effects of our decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke.

WE WILL pay Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke their normal wages for the period set forth in the remedy section of the Board's decision.

WE WILL, within 14 days of the date of the Board's order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

WE WILL make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section in the Board's decision.

WE WILL, within 14 days of the date of the Board's order, remove from our files any reference to Corish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION

Henry R. Protas, Esq., for the General Counsel.
Richardson Todd Eagen, Esq., of Harrisburg, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on January 26 and 27, 2010. The complaint, as amended, alleges that Respondent (PSCOA) violated Section 8(a)(5) and (1) of the Act by failing to give effect to, and thereafter repudiating, a collective bargaining agreement between it and the Charging Party Union (the Union or BARSUEA). The amended complaint also alleges that Respondent violated Section 8(a)(5) and (1) by discharging employees represented by the Union without prior notice to the Union and without affording it an opportunity to bargain concerning the discharges and their effects; and by failing to provide, or, as further amended at the hearing, unreasonably delaying in providing, relevant information to the Union. The Respondent filed an answer denying the essential allegations in the complaint.

After the conclusion of the trial, the Acting General Counsel and the Respondent submitted briefs, which I have read and considered. Based on the entire record in this case, including the testimony of the witnesses, and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, an unincorporated Pennsylvania association with an office in Harrisburg, Pennsylvania, represents employees in bargaining units within the Commonwealth of Pennsylvania. In a representative 1-year period, Respondent received dues and fees in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly outside the Commonwealth. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

Background and Contested Election for Leadership of Respondent

Since June 2001, Respondent has represented some 11,000 correctional officers at 28 facilities in Pennsylvania's prison system. It is led by a 13-member executive board, including a president and other officers. And it operates under a written constitution that sets forth the responsibilities and duties of its officers and governing executive board. Tr. 22, GC Exh. 2. Respondent's headquarters are located in Harrisburg, where its president and other officers and employees maintain offices.

In May 2009, Ron Pinto, Respondent's eastern regional vice president and a member of its executive board, announced that he was a candidate for the office of president of Respondent in an election that would be held to fill the position in June 2010. The incumbent president, Donald McNany, who had been in office since August 2002, also announced that he was running for reelection. For the last several years, Pinto and his allies were a minority on the executive board, consistently outvoted by McNany and his supporters. Tr. 49–50.

A mail ballot election to select Respondent's officers and executive board was scheduled for June 2010. Although there were three slates of candidates, the real contest was between McNany, and his mostly incumbent slate, and Pinto, whose slate included some incumbents, but was regarded as the insurgent group. The ballots were mailed to the membership in late May and completed ballots were counted on June 25, 2010, at the offices of the American Arbitration Association in Philadelphia. Tr. 19, 51–52. Pinto received a majority of the votes for president, and some candidates on his slate were also elected. But some of the other positions required a runoff election because no candidate had received a majority. R Exh. 1, Tr. 26. The runoff election was held on August 17, 2010. Tr. 161. After the runoff election, the Pinto slate controlled all of the 13 executive board positions.

After the June 25 announcement of the vote results for presi-

dent, there was confusion as to when Pinto was going to take office and when McNany would leave office. McNany, who lives in Butler, some 230 miles from Harrisburg, moved out of the president's office in Harrisburg on June 29. On that date, Pinto moved into the office. However, in some respects, McNany continued to act as president and some of the incumbent officers and board members continued in office until the results of the runoff election were announced a month later. In addition, the Elections Committee, which apparently supervised the election, sought a manual recount of the election results, further delaying an orderly transition. In support of his effort to clarify the situation, Pinto filed a lawsuit to certify the election results and determine when exactly he could take office. On July 15, 2010, Judge Andrew Dowling of the Court of Common Pleas for Dauphin County, issued a memorandum opinion and order providing, inter alia, that Pinto and four other elected officers and executive board members be certified as having won their positions effective July 8, 2010. GC Exh. 7 & 8. Later that day, Pinto announced that he would be sworn in as president on July 20; he was in fact sworn in on July 20 at Respondent's headquarters in Harrisburg.

The Union Wins Representation Rights for Respondent's Employees and Concludes an Agreement with McNany

On June 25, 2010, the Union filed an election petition with the Board's regional office in Philadelphia seeking to represent Respondent's roughly 20 business agents and staff employees. Tr. 24, 85, GC Exh. 3.[1] The petition was faxed to the regional office late in the day on June 24 by Shawn Hood, the Union's president and a business agent for Respondent. Hood had been a supporter of the loser in the presidential election, Donald McNany, and was present in Philadelphia when the vote count was announced on June 25. Hood had indicated on the election petition that the Respondent's representative was Ron Pinto so it was served on Pinto. Since Pinto had not yet taken office when the petition was served on him, on June 28, he walked across the hall to McNany's office and hand delivered the petition to McNany. Tr. 14–15.

On July 1, 2010, the Respondent and the Union entered into a stipulated election agreement, approved by the region, setting an election for July 12, 2010, in the following unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards and supervisors.

GC Exh. 4, Tr. 26–27. The election was held as scheduled and the Union won. On July 21, 2010, the Board certified the Union as the official bargaining representative of the Respondent's employees. GC Exh. 6.

Between the election and the Board's certification, McNany, on behalf of Respondent, and Hood, on behalf of the Union, engaged in three negotiating sessions, the last of which was to go over the language of and sign a final collective bargaining agreement. At the last session, on July 19, McNany and Hood signed the agreement, which had a 5 year term and contained new and generous severance and other benefits. Tr. 33–35, 59, 60–63, GC Exh. 9. McNany and Hood met in western Pennsylvania, where they both lived, not at Respondent's Harrisburg offices. Tr. 69–70. Nor did McNany consult Respondent's executive board or Pinto on any matter involving the Union's representation rights, the negotiations, or the collective bargaining agreement he and Hood signed. Tr. 54–60. McNany testified that, at the end of July, he submitted a copy of the collective bargaining agreement to Sam Brezler, the outgoing secretary of Respondent. Brezler was retiring and had not run for reelection; he was still in office, awaiting the selection of his successor, who would be chosen in the runoff election on August 17, 2010. Tr. 38–39, 72.

The Union's Information Request

On July 20, 2010, the Union's secretary-treasurer, Patricia Hurd, prepared a letter asking Respondent to provide the names and addresses of the unit employees. Hurd, who, as one of Respondent's business agents, had an office at Respondent's Harrisburg headquarters, placed a copy of the letter in McNany's mailbox at headquarters. But, because Pinto was being sworn in as president that day, she also placed a copy, along with a covering note, in Pinto's mailbox at headquarters. Tr. 140–142, GC Exh. 11, 12.

Hurd received no response to her July 20 request so she sent another request, dated August 16, 2010, to Jason Bloom, Respondent's western regional vice president, asking for the same information she had requested the month before. GC Exh. 13, Tr. 144–145. The Union received no reply to this letter, but, on November 9, 2010, after the initial complaint issued in this case, Respondent's lawyer did provide the requested information to the Union. R Exh. 11; Tr. 205, 146–147. Pinto testified that he was unaware of the July 20 request, and, although he was aware of the August 16 request, he did not answer that request immediately because he was seeking evidence of the Union's certification, which he did not confirm until August 23. Tr. 216–217. Although the complaint simply alleges that the information was not provided, at the hearing, counsel for the Acting General Counsel effectively amended the complaint on this issue and now alleges that the Respondent unreasonably delayed providing the information. Tr. 142–143.

Respondent's New Regime Discharges Some Employees and Refuses to Acknowledge the July 19 Bargaining Agreement

According to Jason Bloom, who was reelected to Respondent's executive board on the Pinto slate as western regional vice-president in June 2010, the Pinto slate's platform on Respondent's business agents and employees was essentially one word, "change." Tr. 226–227. In accordance with that view, on July 17, 2010, Bloom sent a letter to all 13 business agents of Respondent asking each of them to submit a letter of interest to be considered for a continued business agent position by the end of the day on July 20. The letter stated that those who were not interested in remaining as business agents should return Respondent's property in their possession and that those who wanted to remain would be scheduled for interviews. R Exh. 7; Tr. 228–229. All but one indicated an intent to remain. Tr. 229. Bloom conducted interviews in the first 2 weeks of August. On August 20, 2010, seven of the business agents were

[1] At that time, Respondent employed 13 business agents and 7 clerical employees.

notified that they had been terminated and that they should make arrangements to return to their positions as correctional officers. GC Exh. 14. Subsequently, the terminations of two of the business agents, those of Robert Smith and Larry Blackwell, were rescinded and they were retained by Respondent. Tr. 232.[2]

One other employee was discharged by Respondent after the Pinto team took office. She was Sonya Corish, a staff employee, who carried the job description of lung and heart clerk. She was terminated on August 18 (Tr. 232–234).

On August 23, 2010, the Union filed grievances with the Respondent alleging that it had violated the July 19 collective bargaining agreement by "terminating employees without just cause," failing to pay them "the negotiated severance and unused leave," and failing to bid the vacant positions. GC Exh. 15.

On August 27, 2010, Respondent, through its lawyer, sent the Union a letter in response to the grievances. The letter stated that the Respondent had just recently learned of the existence of the Union and its July 19 collective bargaining agreement. The letter also stated that the agreement was void because McNany had no authority to sign the agreement on behalf of the Respondent since he had been voted out of office and the agreement had not been approved by Respondent's executive board, as required by Respondent's constitution. GC Exh. 16.

On January 3, 2011, Respondent entered into a new collective bargaining agreement with the Union. That agreement, which runs for a term of 1 year and dispenses with the lucrative severance and other benefits in the July 19 agreement, was signed by President Pinto and a representative of the Union. R Exh. 10. Unlike the July 19 agreement, the new agreement was approved by Respondent's executive board. Tr. 204–205.

Discussion and Analysis

The complaint presents three basic questions: (1) Did the Respondent violate Section 8(a)(5) and (1) of the Act by failing to give effect to, and repudiating, the July 19 collective bargaining agreement negotiated and signed by McNany and Hood; (2) Did Respondent violate the Act by, unilaterally and without giving prior notice to the Union, discharging employees in August 2010, and failing to bargain over the discharges and their effect; and (3) Did Respondent unreasonably delay providing information to the Union in response to its information request. Respondent contests the validity of the July 19 collective bargaining agreement, but does not contest the Union's representative status. Thus, the complaint allegations must be considered in that light.

Failing to Give Effect to and Repudiating the July 19 Bargaining Agreement

The Acting General Counsel's allegation that Respondent unlawfully failed to give effect to and repudiated the July 19 collective bargaining agreement turns on whether McNany had the authority to negotiate and execute the agreement. I agree with the Respondent that McNany had no such authority.

First of all, when McNany negotiated and signed the agreement, he was the defeated former president of Respondent. The vote count announced on June 25 not only showed that Pinto had received a majority of the votes cast for that position, but that McNany was not even a close second. He trailed Pinto by over 1000 votes, out of the some 4500 votes cast for three presidential candidates. R Exh. 1. Although there was some confusion as to exactly when the new president would take office, that was a technicality eventually resolved by a state court judge, who ruled, on July 15, that Pinto should be certified as having won the presidency as of July 8. Actually, McNany had physically abandoned his office in Harrisburg on June 29, and Pinto moved into that office on the same day. McNany had retreated to his home in Butler, Pennsylvania, 230 miles away from Respondent's headquarters in Harrisburg. Nor did McNany seek, or receive, any specific authority to negotiate or sign an agreement from either the executive board or the newly elected president. In these circumstances, I find that McNany had no actual authority to negotiate or sign the July 19 bargaining agreement.

Even if McNany could, by some stretch of the imagination, still be considered president of Respondent when he negotiated and signed the July 19 agreement, he did not have the authority, under Respondent's constitution, to bind Respondent without the approval of Respondent's executive board, which he never sought or received. At the outset, the July 19 agreement committed Respondent to wages and benefits well in excess of the $5000 limit, beyond which executive board approval was required. Tr. 60–63. Contrary to McNany's testimony, the absence of any provision in the constitution governing collective bargaining for Respondent's employees does not give him the authority to conclude such agreement in excess of the $5000 limit. Even though the constitution is silent on the authority over bargaining agreements, the constitution does give the executive board, not the president, authority over financial commitments and personnel and benefits policies that are typically covered by bargaining agreements. See GC Exh. 2, pp. 9–11, Tr. 60–66. The executive board is also empowered to enter into agreements necessary to effectuate its purposes and objectives. GC Exh. 2, p. 10. The record contains documentary evidence showing that the executive board regularly approved agreements, financial commitments and personnel policies in accordance with its constitutional authority. See Tr. 240–264, and accompanying exhibits. Indeed, the "governing authority" of Respondent resides in the executive board and the president simply has the responsibility to enforce and carry out "the policies established" by the executive board. GC Exh. 2, p. 4 and p. 9. Nor, contrary to McNany's testimony, does the president have the sole authority to construe or interpret the constitution. That responsibility may initially fall upon the president, but the constitution clearly states that the president's authority is "subject to the approval of the executive board." Tr. 68, GC Exh. 2,

[2] As indicated in the termination letters, the Respondent's business agents were on leave of absence from their positions as corrections officers with the Commonwealth of Pennsylvania. Indeed, since January of 2007, they were paid a salary by the Commonwealth, which was reimbursed by Respondent. So when they were terminated, the business agents returned to their jobs as corrections officers. Likewise, an outgoing officer of Respondent, such as McNany, who was defeated for reelection, was able to return to his position as a corrections officer. McNany did indeed return to his position as a corrections officer in August of 2010.

p. 5–6. Thus, the ultimate authority to commit Respondent to a collective bargaining agreement rests not with its president, but with its executive board.

Nor did McNany have apparent authority to bind Respondent to a collective bargaining agreement. Apparent authority "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question." *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1122 (2003). "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that his conduct is likely to create such belief." Id., cited with approval in *Mastec Direct TV*, 356 NLRB No. 110, slip op. 1–2 (2011). Neither of these situations is present here. Contrary to the Acting General Counsel's assertion in his brief (Br. 33), the Respondent's new leadership gave no signals that McNany was acting in its interests. Quite to the contrary, it vigorously fought against McNany's attempt to remain in office after his election defeat, even to the point of filing a lawsuit to uphold the election results. There was thus no manifestation by anyone from Respondent, aside from McNany, its purported agent, to Hood that would provide a reasonable basis for him, or anyone else, to believe that McNany had the apparent authority to negotiate and conclude a collective bargaining agreement on behalf of Respondent. See also *300 Exhibit Services & Events, Inc.*, 356 NLRB No. 66, slip op. 4–5 (2010).[3]

Indeed, it appears that Hood and McNany tried to keep their negotiations secret in an effort to conclude an agreement before Respondent's newly elected leadership took office. The agreement, as noted, was signed 1 day before Pinto was sworn in as president. But to rule that McNany was authorized to act on July 19, but not on July 20, would exalt form over substance. Both Hood and McNany knew that McNany had no legitimacy to act on behalf of Respondent at this time. They knew McNany had lost the election as early as June 25. Indeed, Hood himself had named Pinto as Respondent's representative when he filed the election petition before the Union was even selected as bargaining representative. Moreover, a judge had directed that Pinto be certified as the winner of the election as of July 8. And it was generally announced and known throughout the membership on July 15 that Pinto would be sworn in on July 20. But McNany and Hood carried on sham negotiations in an effort, I believe, to give a semblance of legitimacy to the greater benefits, including severance benefits, that the July 19 agreement gave to business agents like Hood, who probably read the handwriting on the wall that he might be ousted by the new regime. Hood had supported McNany in the presidential election and he and McNany colluded to give Hood a questionable one-time payment of over $40,000 shortly before McNany left office, supposedly for a past inequity in pay. Indeed, the check to Hood was issued the day before the election results for Respondent's officers and executive board were announced. See Tr. 270–292 and accompanying exhibits. The relationship between Hood and McNany was not at arms length and it infected the whole bargaining process that led to the signing of the July 19 agreement. This provides additional support for my view that McNany had no authority, actual or apparent, to commit the Respondent to a 5-year collective bargaining agreement that gave unusually generous benefits to business agents like Hood.[4]

In sum, McNany had no authority to enter into the July 19 collective bargaining agreement. Thus, that agreement has no legitimacy. It follows that Respondent did not violate the Act when it refused to give the agreement any effect and when it repudiated the agreement. I shall therefore dismiss those allegations in the complaint.[5]

The Discharge of Business Agents and a Clerical Employee

The complaint also alleges that Respondent violated its bargaining obligation by discharging employees represented by the Union on August 20, 2010, without giving prior notice to the Union, and by failing to bargain about the discharges and their effects. It is settled that an employer violates Section 8(a)(5) and (1) of the Act by unilaterally changing employee wages, hours and other terms and conditions of employment—mandatory subjects of bargaining—without first providing their bargaining representative prior notice and opportunity to bargain over those changes. *NLRB v. Katz*, 369 U.S. 736 (1962). Termination of employment has long been considered a mandatory subject of bargaining, requiring bargaining over discharges after they have occurred. *Ryder Distribution Resources*, 302 NLRB 76, 90 (1991). But the prior notice rule does not automatically apply before discharges actually occur. The Board has held that, where an employer has in place pre-disciplinary policies that limit discretion, and applies those policies, there is no requirement that the employer bargain before each employee is disciplined, although there may be such a requirement after the discipline is imposed. See *Fresno Bee*, 337 NLRB 1161,

[3] There is testimony that Hood asked McNany, at one point during the negotiations, whether McNany needed to get anyone else involved and McNany replied in the negative. That statement does not establish apparent authority. In fact, it supports the notion that Hood knew he was on shaky ground in dealing with McNany. In any event, it is well settled under general agency principles that the statements of a purported agent cannot establish the existence of an agency relationship. *Karavos Campania Naviera S.A. v. Atlantica Export Corp.*, 588 F.2d 1, 11 (2d Cir. 1978), citing authorities.

[4] For example, the July 19 agreement commits Respondent to pay 13 business agents, including Hood, salaries of over $70,000 each for 5 years, provides for a $5,000 per month credit card authorization and $100,000 travel and life insurance for each agent, and provides for a severance package to each agent that amounts to 2 months salary for every year of service. For someone like Hood, that would net him over $70,000 in severance pay. Tr. 60–63.

[5] In support of his position, the Acting General Counsel cites (Br. 27 n. 17, 31) *Teamsters Local 575*, 259 NLRB 344 (1981). But that case is distinguishable. In *Teamsters*, unlike here, the issue was whether the employer's former leadership unlawfully assisted the clerical union, which obtained bargaining rights and later negotiated and signed a bargaining agreement with the employer. Moreover, unlike in this case, in *Teamsters*, the outgoing official who signed the bargaining agreement on behalf of the employer did so before he was voted out of office and he secured an opinion from counsel that he was not required to obtain the approval of the executive board.

1186–1187 (2002).[6]

Contrary to the Acting General Counsel's assertion that the Union was not given prior notice of the discharge of Respondent's business agents, the record shows that such notice was given. On July 17, all of Respondent's 13 business agents were sent a letter asking them to submit a letter of interest to retain their jobs. The letter stated that those who expressed an interest in keeping their jobs would be interviewed. The clear implication was that continued employment depended on a successful interview. This should have put all business agents on notice that they might be terminated. Since this was the entire unit of business agents, such notice was tantamount to notice to the Union. Among those receiving the July 17 letter were the Union's president and its secretary-treasurer. Yet the Union made no request to bargain prior to the interviews or the possible terminations. In these circumstances, I find that the Union had adequate notice of the impending terminations and its failure to request bargaining permitted Respondent to carry out the termination decisions implicit in the July 17 notices unilaterally. Accordingly, the complaint is dismissed insofar as it alleges a violation with respect to the discharge of the business agents on August 20, 2010, without giving the Union prior notice or opportunity to bargain.

The discharge of clerical employee Sonya Corish is a different matter. She was not a business agent so she did not receive a copy of the July 17 notice. Indeed, neither she nor the Union received prior notice that she might be discharged. However, the Respondent interposes another defense to the complaint, which has particular application to Corish's situation. Respondent contends, contrary to the testimony of former President McNany, who insisted all of Respondent's employees were at-will employees, that the employees were covered by a predisciplinary policy that severely limited Respondent's discretion. The existence of such a policy, Respondent further contends, relieved it of any advance bargaining obligation, at least as to Corish's termination, under *Fresno Bee*, cited above.[7]

In support of its contention, Respondent refers to a policy statement issued to all of Respondent's executive officers by former President McNany on May 12, 2003. The statement pointed out that, at a May 7, 2003 executive board meeting, "we discussed and will implement the following disciplinary process:

> 1. Counseling session—Verbal, with notation of same in supervisory file.
> 2. Letter of reprimand—Copy to individual and supervisory file.
> 3. Unpaid suspension—Length of suspension will by determined by the offense.
> 4. Termination"

The policy statement concluded that "[b]y following this procedure, we will be able to establish just cause for any and all discipline imposed." R Exh. 3. This policy statement was placed in Respondent's regularly maintained policy booklet that contained many other personnel policies that had been approved by the executive board. Tr. 241–244.

The problem with Respondent's position is that, when it discharged Corish, it did not apply the above disciplinary policies. It summarily discharged her for incompetency. It did not consider counseling, reprimand or suspension before discharging Corish. Tr. 166–168. In these circumstances, I find that Respondent utilized virtually complete discretion when it discharged Corish. Since Corish was represented by the Union and the discharge obviously affected working conditions, I find that Respondent could not discharge her without providing prior notice and an opportunity to bargain to the Union. At the very least, had the Union been given prior notice, it could have insisted that Respondent adhere to its disciplinary policies when considering Corish's discharge. Ironically, Respondent is in the unusual, and, indeed, inconsistent, position of urging the existence of disciplinary policies as a defense to the violation alleged, but not following those very policies when it unilaterally discharged the individual. In these circumstances, I find that Respondent violated Section 8(a)(5) and (1) of the Act by discharging Corish without bargaining with the Union over both its decision to discharge her and the effects of that decision.

There is one remaining question: Was the Respondent required to bargain with the Union over the effects of the decision to discharge the business agents, even though there was no obligation to bargain prior to the decision because adequate notice was given to the Union? It is clear that the Union did not specifically ask to bargain either over the decision or its effects. Ordinarily that would end the matter. But the Union did file a grievance, after the August 20 discharge of the business agents, alleging that Respondent had violated the July 19 bargaining agreement by terminating employees without just cause. The July 19 bargaining agreement was, of course, not a valid agreement. But the grievance over the discharges essentially amounts to a request to bargain over the effects of the decision to discharge the business agents. Surely, an incumbent union may file a grievance, which essentially amounts to a request to bargain, even in the absence of a valid collective bargaining agreement. I do not believe that the Union and the employees it represents should be penalized for the Union's having based its grievance on the void bargaining agreement. Had the Union known that it could not rely on the agreement and its grievance procedure to protect the rights of its members, it surely would have requested bargaining over the effects of the discharge decisions. I will therefore treat the grievance filing as a request by the Union to bargain over the effects of the decision to discharge the business agents. Respondent clearly failed to bargain over the effects of the discharge decision. Accordingly, I find that Respondent violated Section

[6] In *Alan Ritchey, Inc.*, 354 NLRB 628 (2009), a two-member panel of the Board cited *Fresno Bee* with approval and observed, at fn. 11, that *Fresno Bee*, which found no violation, was not irreconcilable with *Washoe Medical Center, Inc.*, 337 NLRB 202 (2001), a case finding a violation.

[7] Respondent also raises this as an alternative defense to the allegation involving the business agents. But I do not reach the issue with respect to the business agents because, in their case, there was adequate prior notice before the discharges were effectuated, thus relieving Respondent of the requirement to bargain with the Union before effectuating the discharges.

8(a)(5) and (1) by failing to bargain over the effects of the decision to discharge the business agents. See *Ryder Distribution Resources*, above, 302 NLRB at 90.

Although Respondent need not bargain over the decision to discharge the business agents, it is required to bargain over its effects. I understand that the business agents returned to their former jobs as corrections officers. Their losses thus may be minimal. But there may be severance pay and other accrued, but unpaid, benefits, such as vacation or sick pay, that could be involved in effects bargaining. Any severance pay due the business agents in this case would be subject to the bargaining process and Respondent is not required to agree to anything, provided it bargains in good faith to impasse on the issue. Moreover, the typical remedy for effects bargaining, under the Board's order in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), sets a floor of 2 weeks backpay, a not unreasonable severance package, in view of the bargaining violation I have found.

The Information Request

This is an easy one. Respondent did not provide the information requested by the Union until November 9, 2010, after the complaint issued alleging an unlawful refusal to provide the information. This was almost 5 months after it was first requested. Even assuming that the new regime did not know about the first request, it is clear that Respondent knew of the second request, which was made on August 16. Respondent has no explanation for why it waited for another 2-1/2 months before providing the requested information, which was clearly, indeed, presumptively, relevant. Nor was the request onerous. It simply asked for the names and addresses of the roughly 20 employees in the unit, information to which it was clearly entitled. Respondent's delay in providing the information was thus unreasonable. I find that, by its unreasonable delay in providing the information, Respondent violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondent violated Section 8(a)(5) and (1) of the Act by discharging employee Sonya Corish without giving the Union prior notice and an opportunity to bargain over the discharge or its effects.
2. Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain over the effects of its decision to discharge business agents and employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.
3. Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing information to the Union.
4. The above violations are unfair labor practices affecting commerce within the meaning of the Act.
5. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent violated the Act in certain respects, I shall recommend that it cease and desist from engaging in such conduct, take affirmative action to remedy its violations, and post an appropriate notice. The Respondent will be ordered to bargain with the Union concerning its decision and the effects of its decision to discharge employee Sonya Corish and the effects of its decision to discharge employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke. Respondent will also be ordered to reinstate employee Sonya Corish and make her whole for any losses she may have suffered because of its unlawful refusal to bargain over her discharge. See *Lapeer Foundry & Machine*, 289 NLRB 952, 955-956 (1988). Any backpay owing, less any net interim earnings, shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Respondent's failure to engage in effects bargaining on the discharge of employees Dyches, Hood, Hurd, Miller and Parke shall be remedied by a backpay remedy similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998). Thus, the Respondent shall pay those employees backpay at their normal wages from 5 days after the date of this order until the earliest of the following conditions: (1) the date Respondent bargains to agreement as to the effects of the discharges; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this order or to commence negotiations within 5 days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date they were discharged to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event, shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay, less any net interim earnings, shall be computed in accordance with the Board cases cited above, in connection with Corish's backpay.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Pennsylvania State Corrections Officers Association, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing or failing to bargain in good faith with the Union in the following appropriate unit:

> All full-time and regular part-time business agents and support staff employed by Respondent, excluding all other employees, guards and supervisors within the meaning of the Act.

(b) Refusing to bargain collectively with the Union by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving the Un-

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ion prior notice and an opportunity about those changes.

(c) Refusing to bargain collectively with the Union by unreasonably delaying in providing relevant information requested by the Union.

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with the Union as the exclusive collective bargaining representative of the employees in the above appropriate unit.

(b) On request, bargain with the Union with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

(c) Within 14 days from the date of this order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(d) Make Sonya Cornish whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section of this decision.

(e) Within 14 days from the date of this order, remove from its files any reference to Cornish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Pay its discharged business agents, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke, their normal wages for the period set forth in the remedy section of this decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(h) Within 14 days after service by the Region, post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 24, 2010.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 17, 2011

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT refuse or fail to bargain in good faith with Business Agents Representing State Union Employees Association (BARSUEA) in the following appropriate unit:

All full-time and regular part-time business agents and support staff employed by Pennsylvania State Corrections Officers Association (PSCOA), excluding all other employees, guards and supervisors within the meaning of the Act.

WE WILL NOT refuse to bargain collectively with BARSUEA by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity about those changes.

WE WILL NOT refuse to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective bargaining representative of the employees in the above appropriate unit.

[9] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with BARSUEA with respect to the effects of our decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

WE WILL pay Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke their normal wages for the period set forth in the remedy section of the Board's decision.

WE WILL, within 14 days of the date of the Board's order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

WE WILL make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section in the Board's decision.

WE WILL, within 14 days of the date of the Board's order, remove from our files any reference to Corish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION

JD–11–11
Harrisburg, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

Cases 4-CA-37648
4-CA-37649
4-CA-37652

BUSINESS AGENTS REPRESENTING
STATE UNION EMPLOYEES ASSOCIATON

Henry R. Protas, Esq., of Philadelphia, PA,
for the General Counsel.
Richardson Todd Eagen, Esq., of Harrisburg, PA,
for the Respondent.

DECISION

Statement of the Case

ROBERT A. GIANNASI, Administrative Law Judge: This case was tried in Philadelphia, Pennsylvania on January 26 and 27, 2010. The complaint, as amended, alleges that Respondent (PSCOA) violated Section 8(a)(5) and (1) of the Act by failing to give effect to, and thereafter repudiating, a collective bargaining agreement between it and the Charging Party Union (the Union or BARSUEA). The amended complaint also alleges that Respondent violated Section 8(a)(5) and (1) by discharging employees represented by the Union without prior notice to the Union and without affording it an opportunity to bargain concerning the discharges and their effects; and by failing to provide, or, as further amended at the hearing, unreasonably delaying in providing, relevant information to the Union. The Respondent filed an answer denying the essential allegations in the complaint.

After the conclusion of the trial, the Acting General Counsel and the Respondent submitted briefs, which I have read and considered. Based on the entire record in this case, including the testimony of the witnesses, and my observation of their demeanor, I make the following

Findings of Fact

I. Jurisdiction

Respondent, an unincorporated Pennsylvania association with an office in Harrisburg, Pennsylvania, represents employees in bargaining units within the Commonwealth of Pennsylvania. In a representative 1-year period, Respondent received dues and fees in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly outside the

Commonwealth. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

The Facts

Background and Contested Election for Leadership of Respondent

Since June 2001, Respondent has represented some 11,000 correctional officers at 28 facilities in Pennsylvania's prison system. It is led by a 13-member executive board, including a president and other officers. And it operates under a written constitution that sets forth the responsibilities and duties of its officers and governing executive board. Tr. 22, GC Exh. 2. Respondent's headquarters are located in Harrisburg, where its president and other officers and employees maintain offices.

In May 2009, Ron Pinto, Respondent's eastern regional vice president and a member of its executive board, announced that he was a candidate for the office of president of Respondent in an election that would be held to fill the position in June 2010. The incumbent president, Donald McNany, who had been in office since August 2002, also announced that he was running for reelection. For the last several years, Pinto and his allies were a minority on the executive board, consistently outvoted by McNany and his supporters. Tr. 49-50.

A mail ballot election to select Respondent's officers and executive board was scheduled for June 2010. Although there were three slates of candidates, the real contest was between McNany, and his mostly incumbent slate, and Pinto, whose slate included some incumbents, but was regarded as the insurgent group. The ballots were mailed to the membership in late May and completed ballots were counted on June 25, 2010, at the offices of the American Arbitration Association in Philadelphia. Tr. 19, 51-52. Pinto received a majority of the votes for president, and some candidates on his slate were also elected. But some of the other positions required a runoff election because no candidate had received a majority. R Exh. 1, Tr. 26. The runoff election was held on August 17, 2010. Tr. 161. After the runoff election, the Pinto slate controlled all of the 13 executive board positions.

After the June 25 announcement of the vote results for president, there was confusion as to when Pinto was going to take office and when McNany would leave office. McNany, who lives in Butler, some 230 miles from Harrisburg, moved out of the president's office in Harrisburg on June 29. On that date, Pinto moved into the office. However, in some respects, McNany continued to act as president and some of the incumbent officers and board members continued in office until the results of the runoff election were announced a month later. In addition, the Elections Committee, which apparently supervised the election, sought a manual recount of the election results, further delaying an orderly transition. In support of his effort to clarify the situation, Pinto filed a lawsuit to certify the election results and determine when exactly he could take office. On July 15, 2010, Judge Andrew Dowling of the Court of Common Pleas for Dauphin County, issued a memorandum opinion and order providing, inter alia, that Pinto and four other elected officers and executive board members be certified as having won their positions effective July 8, 2010. GC Exh. 7 & 8. Later that day, Pinto announced that he would be sworn in as president on July 20; he was in fact sworn in on July 20 at Respondent's headquarters in Harrisburg.

The Union Wins Representation Rights for Respondent's Employees and Concludes an Agreement with McNany

On June 25, 2010, the Union filed an election petition with the Board's regional office in Philadelphia seeking to represent Respondent's roughly 20 business agents and staff employees. Tr. 24, 85, GC Exh. 3.[1] The petition was faxed to the regional office late in the day on June 24 by Shawn Hood, the Union's president and a business agent for Respondent. Hood had been a supporter of the loser in the presidential election, Donald McNany, and was present in Philadelphia when the vote count was announced on June 25. Hood had indicated on the election petition that the Respondent's representative was Ron Pinto so it was served on Pinto. Since Pinto had not yet taken office when the petition was served on him, on June 28, he walked across the hall to McNany's office and hand delivered the petition to McNany. Tr. 14-15.

On July 1, 2010, the Respondent and the Union entered into a stipulated election agreement, approved by the region, setting an election for July 12, 2010, in the following unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards and supervisors.

GC Exh. 4, Tr. 26-27. The election was held as scheduled and the Union won. On July 21, 2010, the Board certified the Union as the official bargaining representative of the Respondent's employees. GC Exh. 6.

Between the election and the Board's certification, McNany, on behalf of Respondent, and Hood, on behalf of the Union, engaged in three negotiating sessions, the last of which was to go over the language of and sign a final collective bargaining agreement. At the last session, on July 19, McNany and Hood signed the agreement, which had a 5 year term and contained new and generous severance and other benefits. Tr. 33-35, 59, 60-63, GC Exh. 9. McNany and Hood met in western Pennsylvania, where they both lived, not at Respondent's Harrisburg offices. Tr. 69-70. Nor did McNany consult Respondent's executive board or Pinto on any matter involving the Union's representation rights, the negotiations, or the collective bargaining agreement he and Hood signed. Tr. 54-60. McNany testified that, at the end of July, he submitted a copy of the collective bargaining agreement to Sam Brezler, the outgoing secretary of Respondent. Brezler was retiring and had not run for reelection; he was still in office, awaiting the selection of his successor, who would be chosen in the runoff election on August 17, 2010. Tr. 38-39, 72.

The Union's Information Request

On July 20, 2010, the Union's secretary-treasurer, Patricia Hurd, prepared a letter asking Respondent to provide the names and addresses of the unit employees. Hurd, who, as one of Respondent's business agents, had an office at Respondent's Harrisburg headquarters, placed a copy of the letter in McNany's mailbox at headquarters. But, because Pinto was being sworn in as president that day, she also placed a copy, along with a covering note, in Pinto's mailbox at headquarters. Tr. 140-142, GC Exh. 11, 12.

Hurd received no response to her July 20 request so she sent another request, dated August 16, 2010, to Jason Bloom, Respondent's western regional vice president, asking for the

[1] At that time, Respondent employed 13 business agents and 7 clerical employees.

same information she had requested the month before. GC Exh. 13, Tr. 144-145. The Union received no reply to this letter, but, on November 9, 2010, after the initial complaint issued in this case, Respondent's lawyer did provide the requested information to the Union. R Exh. 11; Tr. 205, 146-147. Pinto testified that he was unaware of the July 20 request, and, although he was aware of the August 16 request, he did not answer that request immediately because he was seeking evidence of the Union's certification, which he did not confirm until August 23. Tr. 216-217. Although the complaint simply alleges that the information was not provided, at the hearing, counsel for the Acting General Counsel effectively amended the complaint on this issue and now alleges that the Respondent unreasonably delayed providing the information. Tr. 142-143.

Respondent's New Regime Discharges Some Employees and Refuses to Acknowledge the July 19 Bargaining Agreement

According to Jason Bloom, who was reelected to Respondent's executive board on the Pinto slate as western regional vice-president in June 2010, the Pinto slate's platform on Respondent's business agents and employees was essentially one word, "change." Tr. 226-227. In accordance with that view, on July 17, 2010, Bloom sent a letter to all 13 business agents of Respondent asking each of them to submit a letter of interest to be considered for a continued business agent position by the end of the day on July 20. The letter stated that those who were not interested in remaining as business agents should return Respondent's property in their possession and that those who wanted to remain would be scheduled for interviews. R Exh. 7; Tr. 228-229. All but one indicated an intent to remain. Tr. 229. Bloom conducted interviews in the first 2 weeks of August. On August 20, 2010, seven of the business agents were notified that they had been terminated and that they should make arrangements to return to their positions as correctional officers. GC Exh. 14. Subsequently, the terminations of two of the business agents, those of Robert Smith and Larry Blackwell, were rescinded and they were retained by Respondent. Tr. 232.[2]

One other employee was discharged by Respondent after the Pinto team took office. She was Sonya Corish, a staff employee, who carried the job description of lung and heart clerk. She was terminated on August 18 (Tr. 232-234).

On August 23, 2010, the Union filed grievances with the Respondent alleging that it had violated the July 19 collective bargaining agreement by "terminating employees without just cause," failing to pay them "the negotiated severance and unused leave," and failing to bid the vacant positions. GC Exh. 15.

On August 27, 2010, Respondent, through its lawyer, sent the Union a letter in response to the grievances. The letter stated that the Respondent had just recently learned of the existence of the Union and its July 19 collective bargaining agreement. The letter also stated that the agreement was void because McNany had no authority to sign the agreement on behalf of the Respondent since he had been voted out of office and the agreement had not been

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[2] As indicated in the termination letters, the Respondent's business agents were on leave of absence from their positions as corrections officers with the Commonwealth of Pennsylvania. Indeed, since January of 2007, they were paid a salary by the Commonwealth, which was reimbursed by Respondent. So when they were terminated, the business agents returned to their jobs as corrections officers. Likewise, an outgoing officer of Respondent, such as McNany, who was defeated for reelection, was able to return to his position as a corrections officer. McNany did indeed return to his position as a corrections officer in August of 2010.

approved by Respondent's executive board, as required by Respondent's constitution. GC Exh. 16.

On January 3, 2011, Respondent entered into a new collective bargaining agreement with the Union. That agreement, which runs for a term of 1 year and dispenses with the lucrative severance and other benefits in the July 19 agreement, was signed by President Pinto and a representative of the Union. R Exh. 10. Unlike the July 19 agreement, the new agreement was approved by Respondent's executive board. Tr. 204-205.

Discussion and Analysis

The complaint presents three basic questions: (1) Did the Respondent violate Section 8(a)(5) and (1) of the Act by failing to give effect to, and repudiating, the July 19 collective bargaining agreement negotiated and signed by McNany and Hood; (2) Did Respondent violate the Act by, unilaterally and without giving prior notice to the Union, discharging employees in August 2010, and failing to bargain over the discharges and their effect; and (3) Did Respondent unreasonably delay providing information to the Union in response to its information request. Respondent contests the validity of the July 19 collective bargaining agreement, but does not contest the Union's representative status. Thus, the complaint allegations must be considered in that light.

Failing to Give Effect to and Repudiating the July 19 Bargaining Agreement

The Acting General Counsel's allegation that Respondent unlawfully failed to give effect to and repudiated the July 19 collective bargaining agreement turns on whether McNany had the authority to negotiate and execute the agreement. I agree with the Respondent that McNany had no such authority.

First of all, when McNany negotiated and signed the agreement, he was the defeated former president of Respondent. The vote count announced on June 25 not only showed that Pinto had received a majority of the votes cast for that position, but that McNany was not even a close second. He trailed Pinto by over 1000 votes, out of the some 4500 votes cast for three presidential candidates. R Exh. 1. Although there was some confusion as to exactly when the new president would take office, that was a technicality eventually resolved by a state court judge, who ruled, on July 15, that Pinto should be certified as having won the presidency as of July 8. Actually, McNany had physically abandoned his office in Harrisburg on June 29, and Pinto moved into that office on the same day. McNany had retreated to his home in Butler, Pennsylvania, 230 miles away from Respondent's headquarters in Harrisburg. Nor did McNany seek, or receive, any specific authority to negotiate or sign an agreement from either the executive board or the newly elected president. In these circumstances, I find that McNany had no actual authority to negotiate or sign the July 19 bargaining agreement.

Even if McNany could, by some stretch of the imagination, still be considered president of Respondent when he negotiated and signed the July 19 agreement, he did not have the authority, under Respondent's constitution, to bind Respondent without the approval of Respondent's executive board, which he never sought or received. At the outset, the July 19 agreement committed Respondent to wages and benefits well in excess of the $5000 limit, beyond which executive board approval was required. Tr. 60-63. Contrary to McNany's testimony, the absence of any provision in the constitution governing collective bargaining for Respondent's employees does not give him the authority to conclude such agreement in excess of the $5000 limit. Even though the constitution is silent on the authority over bargaining agreements, the constitution does give the executive board, not the president, authority over

financial commitments and personnel and benefits policies that are typically covered by bargaining agreements. See GC Exh. 2, pp. 9-11, Tr. 60-66. The executive board is also empowered to enter into agreements necessary to effectuate its purposes and objectives. GC Exh. 2, p. 10. The record contains documentary evidence showing that the executive board regularly approved agreements, financial commitments and personnel policies in accordance with its constitutional authority. See Tr. 240-264, and accompanying exhibits. Indeed, the "governing authority" of Respondent resides in the executive board and the president simply has the responsibility to enforce and carry out "the policies established" by the executive board. GC Exh. 2, p. 4 and p. 9. Nor, contrary to McNany's testimony, does the president have the sole authority to construe or interpret the constitution. That responsibility may initially fall upon the president, but the constitution clearly states that the president's authority is "subject to the approval of the executive board." Tr. 68, GC Exh. 2, p. 5-6. Thus, the ultimate authority to commit Respondent to a collective bargaining agreement rests not with its president, but with its executive board.

Nor did McNany have apparent authority to bind Respondent to a collective bargaining agreement. Apparent authority "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question." *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1122 (2003). "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that his conduct is likely to create such belief." Id., cited with approval in *Mastec Direct TV*, 356 NLRB No. 110, slip op. 1-2 (2011). Neither of these situations is present here. Contrary to the Acting General Counsel's assertion in his brief (Br. 33), the Respondent's new leadership gave no signals that McNany was acting in its interests. Quite to the contrary, it vigorously fought against McNany's attempt to remain in office after his election defeat, even to the point of filing a lawsuit to uphold the election results. There was thus no manifestation by anyone from Respondent, aside from McNany, its purported agent, to Hood that would provide a reasonable basis for him, or anyone else, to believe that McNany had the apparent authority to negotiate and conclude a collective bargaining agreement on behalf of Respondent. See also *300 Exhibit Services & Events, Inc.*, 356 NLRB No. 66, slip op. 4-5 (2010).[3]

Indeed, it appears that Hood and McNany tried to keep their negotiations secret in an effort to conclude an agreement before Respondent's newly elected leadership took office. The agreement, as noted, was signed 1 day before Pinto was sworn in as president. But to rule that McNany was authorized to act on July 19, but not on July 20, would exalt form over substance. Both Hood and McNany knew that McNany had no legitimacy to act on behalf of Respondent at this time. They knew McNany had lost the election as early as June 25. Indeed, Hood himself had named Pinto as Respondent's representative when he filed the election petition before the Union was even selected as bargaining representative. Moreover, a judge had directed that Pinto be certified as the winner of the election as of July 8. And it was generally announced and known throughout the membership on July 15 that Pinto would be sworn in on July 20. But McNany and Hood carried on sham negotiations in an effort, I believe, to give a semblance of

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[3] There is testimony that Hood asked McNany, at one point during the negotiations, whether McNany needed to get anyone else involved and McNany replied in the negative. That statement does not establish apparent authority. In fact, it supports the notion that Hood knew he was on shaky ground in dealing with McNany. In any event, it is well settled under general agency principles that the statements of a purported agent cannot establish the existence of an agency relationship. *Karavos Campania Naviera S.A. v. Atlantica Export Corp.*, 588 F.2d 1, 11 (2nd Cir. 1978), citing authorities.

legitimacy to the greater benefits, including severance benefits, that the July 19 agreement gave to business agents like Hood, who probably read the handwriting on the wall that he might be ousted by the new regime. Hood had supported McNany in the presidential election and he and McNany colluded to give Hood a questionable one-time payment of over $40,000 shortly before McNany left office, supposedly for a past inequity in pay. Indeed, the check to Hood was issued the day before the election results for Respondent's officers and executive board were announced. See Tr. 270-292 and accompanying exhibits. The relationship between Hood and McNany was not at arms length and it infected the whole bargaining process that led to the signing of the July 19 agreement. This provides additional support for my view that McNany had no authority, actual or apparent, to commit the Respondent to a 5-year collective bargaining agreement that gave unusually generous benefits to business agents like Hood.[4]

In sum, McNany had no authority to enter into the July 19 collective bargaining agreement. Thus, that agreement has no legitimacy. It follows that Respondent did not violate the Act when it refused to give the agreement any effect and when it repudiated the agreement. I shall therefore dismiss those allegations in the complaint.[5]

The Discharge of Business Agents and a Clerical Employee

The complaint also alleges that Respondent violated its bargaining obligation by discharging employees represented by the Union on August 20, 2010, without giving prior notice to the Union, and by failing to bargain about the discharges and their effects. It is settled that an employer violates Section 8(a)(5) and (1) of the Act by unilaterally changing employee wages, hours and other terms and conditions of employment—mandatory subjects of bargaining—without first providing their bargaining representative prior notice and opportunity to bargain over those changes. *NLRB v. Katz, 369* U.S. 736 (1962). Termination of employment has long been considered a mandatory subject of bargaining, requiring bargaining over discharges after they have occurred. *Ryder Distribution Resources,* 302 NLRB 76, 90 (1991). But the prior notice rule does not automatically apply before discharges actually occur. The Board has held that, where an employer has in place pre-disciplinary policies that limit discretion, and applies those policies, there is no requirement that the employer bargain before each employee is disciplined, although there may be such a requirement after the discipline is imposed. See *Fresno Bee*, 337 NLRB 1161, 1186-1187 (2002).[6]

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[4] For example, the July 19 agreement commits Respondent to pay 13 business agents, including Hood, salaries of over $70,000 each for 5 years, provides for a $5,000 per month credit card authorization and $100,000 travel and life insurance for each agent, and provides for a severance package to each agent that amounts to 2 months salary for every year of service. For someone like Hood, that would net him over $70,000 in severance pay. Tr. 60-63.

[5] In support of his position, the Acting General Counsel cites (Br. 27 n. 17, 31) *Teamsters Local 575*, 259 NLRB 344 (1981). But that case is distinguishable. In *Teamsters*, unlike here, the issue was whether the employer's former leadership unlawfully assisted the clerical union, which obtained bargaining rights and later negotiated and signed a bargaining agreement with the employer. Moreover, unlike in this case, in *Teamsters*, the outgoing official who signed the bargaining agreement on behalf of the employer did so before he was voted out of office and he secured an opinion from counsel that he was not required to obtain the approval of the executive board.

[6] In *Alan Ritchey, Inc.*, 354 NLRB No. 79 (2009), a two-member panel of the Board cited *Fresno Bee* with approval and observed, at fn. 11, that *Fresno Bee*, which found no violation, was not irreconcilable with *Washoe Medical Center, Inc.*, 337 NLRB 202 (2001), a case finding a violation.

Contrary to the Acting General Counsel's assertion that the Union was not given prior notice of the discharge of Respondent's business agents, the record shows that such notice was given. On July 17, all of Respondent's 13 business agents were sent a letter asking them to submit a letter of interest to retain their jobs. The letter stated that those who expressed an interest in keeping their jobs would be interviewed. The clear implication was that continued employment depended on a successful interview. This should have put all business agents on notice that they might be terminated. Since this was the entire unit of business agents, such notice was tantamount to notice to the Union. Among those receiving the July 17 letter were the Union's president and its secretary-treasurer. Yet the Union made no request to bargain prior to the interviews or the possible terminations. In these circumstances, I find that the Union had adequate notice of the impending terminations and its failure to request bargaining permitted Respondent to carry out the termination decisions implicit in the July 17 notices unilaterally. Accordingly, the complaint is dismissed insofar as it alleges a violation with respect to the discharge of the business agents on August 20, 2010, without giving the Union prior notice or opportunity to bargain.

The discharge of clerical employee Sonya Corish is a different matter. She was not a business agent so she did not receive a copy of the July 17 notice. Indeed, neither she nor the Union received prior notice that she might be discharged. However, the Respondent interposes another defense to the complaint, which has particular application to Corish's situation. Respondent contends, contrary to the testimony of former President McNany, who insisted all of Respondent's employees were at-will employees, that the employees were covered by a predisciplinary policy that severely limited Respondent's discretion. The existence of such a policy, Respondent further contends, relieved it of any advance bargaining obligation, at least as to Corish's termination, under *Fresno Bee*, cited above.[7]

In support of its contention, Respondent refers to a policy statement issued to all of Respondent's executive officers by former President McNany on May 12, 2003. The statement pointed out that, at a May 7, 2003 executive board meeting, "we discussed and will implement the following disciplinary process:

1. Counseling session—Verbal, with notation of same in supervisory file.
2. Letter of reprimand—Copy to individual and supervisory file.
3. Unpaid suspension—Length of suspension will by determined by the offense.
4. Termination"

The policy statement concluded that "[b]y following this procedure, we will be able to establish just cause for any and all discipline imposed." R Exh. 3. This policy statement was placed in Respondent's regularly maintained policy booklet that contained many other personnel policies that had been approved by the executive board. Tr. 241-244.

The problem with Respondent's position is that, when it discharged Corish, it did not apply the above disciplinary policies. It summarily discharged her for incompetency. It did not consider counseling, reprimand or suspension before discharging Corish. Tr. 166-168. In these circumstances, I find that Respondent utilized virtually complete discretion when it discharged Corish. Since Corish was represented by the Union and the discharge obviously affected

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[7] Respondent also raises this as an alternative defense to the allegation involving the business agents. But I do not reach the issue with respect to the business agents because, in their case, there was adequate prior notice before the discharges were effectuated, thus relieving Respondent of the requirement to bargain with the Union before effectuating the discharges.

working conditions, I find that Respondent could not discharge her without providing prior notice and an opportunity to bargain to the Union. At the very least, had the Union been given prior notice, it could have insisted that Respondent adhere to its disciplinary policies when considering Corish's discharge. Ironically, Respondent is in the unusual, and, indeed, inconsistent, position of urging the existence of disciplinary policies as a defense to the violation alleged, but not following those very policies when it unilaterally discharged the individual. In these circumstances, I find that Respondent violated Section 8(a)(5) and (1) of the Act by discharging Corish without bargaining with the Union over both its decision to discharge her and the effects of that decision.

There is one remaining question: Was the Respondent required to bargain with the Union over the effects of the decision to discharge the business agents, even though there was no obligation to bargain prior to the decision because adequate notice was given to the Union? It is clear that the Union did not specifically ask to bargain either over the decision or its effects. Ordinarily that would end the matter. But the Union did file a grievance, after the August 20 discharge of the business agents, alleging that Respondent had violated the July 19 bargaining agreement by terminating employees without just cause. The July 19 bargaining agreement was, of course, not a valid agreement. But the grievance over the discharges essentially amounts to a request to bargain over the effects of the decision to discharge the business agents. Surely, an incumbent union may file a grievance, which essentially amounts to a request to bargain, even in the absence of a valid collective bargaining agreement. I do not believe that the Union and the employees it represents should be penalized for the Union's having based its grievance on the void bargaining agreement. Had the Union known that it could not rely on the agreement and its grievance procedure to protect the rights of its members, it surely would have requested bargaining over the effects of the discharge decisions. I will therefore treat the grievance filing as a request by the Union to bargain over the effects of the decision to discharge the business agents. Respondent clearly failed to bargain over the effects of the discharge decision. Accordingly, I find that Respondent violated Section 8(a)(5) and (1) by failing to bargain over the effects of the decision to discharge the business agents. See *Ryder Distribution Resources*, above, 302 NLRB at 90.

Although Respondent need not bargain over the decision to discharge the business agents, it is required to bargain over its effects. I understand that the business agents returned to their former jobs as corrections officers. Their losses thus may be minimal. But there may be severance pay and other accrued, but unpaid, benefits, such as vacation or sick pay, that could be involved in effects bargaining. Any severance pay due the business agents in this case would be subject to the bargaining process and Respondent is not required to agree to anything, provided it bargains in good faith to impasse on the issue. Moreover, the typical remedy for effects bargaining, under the Board's order in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), sets a floor of 2 weeks backpay, a not unreasonable severance package, in view of the bargaining violation I have found.

The Information Request

This is an easy one. Respondent did not provide the information requested by the Union until November 9, 2010, after the complaint issued alleging an unlawful refusal to provide the information. This was almost 5 months after it was first requested. Even assuming that the new regime did not know about the first request, it is clear that Respondent knew of the second request, which was made on August 16. Respondent has no explanation for why it waited for another 2-1/2 months before providing the requested information, which was clearly, indeed, presumptively, relevant. Nor was the request onerous. It simply asked for the names and addresses of the roughly 20 employees in the unit, information to which it was clearly entitled.

Respondent's delay in providing the information was thus unreasonable. I find that, by its unreasonable delay in providing the information, Respondent violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondent violated Section 8(a)(5) and (1) of the Act by discharging employee Sonya Corish without giving the Union prior notice and an opportunity to bargain over the discharge or its effects.

2. Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain over the effects of its decision to discharge business agents and employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

3. Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing information to the Union.

4. The above violations are unfair labor practices affecting commerce within the meaning of the Act.

5. Respondent has not otherwise violated the Act.

Remedy

Having found that Respondent violated the Act in certain respects, I shall recommend that it cease and desist from engaging in such conduct, take affirmative action to remedy its violations, and post an appropriate notice. The Respondent will be ordered to bargain with the Union concerning its decision and the effects of its decision to discharge employee Sonya Corish and the effects of its decision to discharge employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke. Respondent will also be ordered to reinstate employee Sonya Corish and make her whole for any losses she may have suffered because of its unlawful refusal to bargain over her discharge. See *Lapeer Foundry & Machine*, 289 NLRB 952, 955-956 (1988). Any backpay owing, less any net interim earnings, shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Respondent's failure to engage in effects bargaining on the discharge of employees Dyches, Hood, Hurd, Miller and Parke shall be remedied by a backpay remedy similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998). Thus, the Respondent shall pay those employees backpay at their normal wages from 5 days after the date of this order until the earliest of the following conditions: (1) the date Respondent bargains to agreement as to the effects of the discharges; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this order or to commence negotiations within 5 days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date they were discharged to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event, shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay, less any net interim earnings, shall be

computed in accordance with the Board cases cited above, in connection with Corish's backpay.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:[8]

ORDER

The Respondent, Pennsylvania State Corrections Officers Association, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Refusing or failing to bargain in good faith with the Union in the following appropriate unit:

> All full-time and regular part-time business agents and support staff employed by Respondent, excluding all other employees, guards and supervisors within the meaning of the Act.

(b) Refusing to bargain collectively with the Union by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving the Union prior notice and an opportunity about those changes.

(c) Refusing to bargain collectively with the Union by unreasonably delaying in providing relevant information requested by the Union.

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with the Union as the exclusive collective bargaining representative of the employees in the above appropriate unit.

(b) On request, bargain with the Union with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

(c) Within 14 days from the date of this order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

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[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Make Sonya Cornish whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section of this decision.

(e) Within 14 days from the date of this order, remove from its files any reference to Cornish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Pay its discharged business agents, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke, their normal wages for the period set forth in the remedy section of this decision.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(h) Within 14 days after service by the Region, post at its facility in Harrisburg, Pennsylvania, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 24, 2010.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 17, 2011

Robert A. Giannasi
Administrative Law Judge

[9] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

JD–11–11
Harrisburg, PA

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse or fail to bargain in good faith with Business Agents Representing State Union Employees Association (BARSUEA) in the following appropriate unit:

All full-time and regular part-time business agents and support staff employed by Pennsylvania State Corrections Officers Association (PSCOA), excluding all other employees, guards and supervisors within the meaning of the Act.

WE WILL NOT refuse to bargain collectively with BARSUEA by implementing changes in wages, hours, or other terms and conditions of employment of unit employees without giving BARSUEA prior notice and an opportunity about those changes.

WE WILL NOT refuse to bargain collectively with BARSUEA by unreasonably delaying in providing relevant information requested by BARSUEA.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify, and, on request, bargain with BARSUEA as the exclusive collective bargaining representative of the employees in the above appropriate unit.

JD–11–11
Harrisburg, PA

WE WILL, on request, bargain with BARSUEA with respect to the effects of our decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke.

WE WILL pay Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke their normal wages for the period set forth in the remedy section of the Board's decision.

WE WILL, within 14 days of the date of the Board's order, offer employee Sonya Corish immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

WE WILL make Sonya Corish whole for any loss of earnings and other benefits suffered as a result of our unlawful refusal to bargain over her discharge and its effects, in accordance with the remedy section in the Board's decision.

WE WILL, within 14 days of the date of the Board's order, remove from our files any reference to Corish's unlawful discharge, and, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, One Independence Mall, 7th Floor
Philadelphia, Pennsylvania 19106-4404
Hours: 8:30 a.m. to 5 p.m.
215-597-7601.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.

Exhibit A: Lee Dyches' Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings Commonwealth of Pennsylvania	Net Backpay
2nd/2012	13	$1,549.74	$20,146.62	$15,299.67	$4,846.95
3rd/2012	13	$1,549.74	$20,146.62	$15,347.33	$4,799.30
					$9,646.25

GENERAL COUNSEL'S EXHIBIT 2

Exhibit B: Shawn Hood's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings Commonwealth of Pennsylvania	Net Backpay
2nd/2012	13	$1,597.26	$20,764.38	$17,846.79	$2,917.59
3rd/2012	13	$1,597.26	$20,764.38	$20,446.09	$318.30
					$3,235.89

Exhibit C: Patricia Hurd's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings Commonwealth of Pennsylvania	Net Backpay
2nd/2012	13	$1,572.63	$20,444.19	$14,131.55	$6,312.64
3rd/2012	13	$1,572.63	$20,444.19	$15,001.60	$5,442.59
					$11,755.23

Exhibit D: John Miller's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Commonwealth of Pennsylvania Interim Earnings	Net Backpay
2nd/2012	13	$1,430.29	$18,593.77	$14,058.74	$4,535.03
3rd/2012	13	$1,430.29	$18,593.77	$14,885.72	$3,708.05
					$8,243.08

Exhibit E: Bill Parke's Backpay Calculations

Quarter/Year	Weeks	Weekly Earnings	Gross Backpay	Interim Earnings The Bridges at Bent Creek	Net Backpay
2nd/2012	11	$1,579.06	$17,369.66	$3,359.31	$14,010.35
3rd/2012	7	$1,579.06	$11,053.42	$731.50	$10,321.92
					$24,332.27

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	)	Cases 04-CA-037648
	)	04-CA-037649 *and*
and	)	04-CA-037652
	)	
BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	)	
	)	
Respondent.	)	

AMENDED ANSWER TO COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

COMES NOW, the Pennsylvania State Correctional Officers Association (the "PSCOA") and within the time frame set forth by the Board Rules and Regulations, files this Amended Answer to the Complaint filed by the Regional Director in the above cited case:

INTRODUCTORY STATEMENT

It is admitted that the National Labor Relations Board (the Board) issued a Decision and Order (358 NLRB No. 19). The provisions of that Decision and Order speak for themselves but, as the Introductory Statement itself provides, the payment period would end, inter alia, when the parties reached a bona fide impasse in effects bargaining.

PSCOA avers and contends that it immediately initiated effects bargaining with the members of the BARSUA unit with whom the Board indicated it was required to bargain. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA identified the sum which it intended to pay as a *Transmarine* remedy and offset that

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against previously improperly paid benefits already received by the individuals named in the Board's previous order.

TRANSMARINE BACKPAY PERIOD

1(a) Admitted and Denied. It is admitted that the Board has calculated a *Transmarine* back pay period of 26 weeks. It is denied that such a back pay period is appropriate. By way of further answer, PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(b) Admitted. By way of further answer, PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(c) Denied. By way of further answer, PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(d) Admitted and Denied. It is admitted that the Board has calculated a *Transmarine* back pay period of 26 weeks. It is denied that such a back pay period is appropriate. By way of further answer, it is admitted that the term of the BARSUA officers expired on September 28, 2012. PSCOA avers that BARSUA was essentially defunct and disclaimed any bargaining obligation prior to September 28, 2012. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

1(e) Admitted and Denied. It is admitted that the Board has calculated a *Transmarine* back pay period of 26 weeks in the manner set forth in 1(e). It is denied that such a back pay period is appropriate. By way of further answer, PSCOA avers that BARSUA was essentially defunct and disclaimed any bargaining obligation prior to September 28, 2012. PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

TRANSMARINE GROSS BACKPAY CALCULATION

2(a) Admitted.

2(b) It is admitted that the Board calculated weekly earnings as set forth in Section 2(b) of the compliance specification.

2(c) It is admitted that the Board calculated gross back pay as set forth in Section 2(c) of the compliance specification.

2(d) Denied. Following his layoff, Mr. Parke left the employment of the Commonwealth of Pennsylvania even though employment was available at his prior position as a correctional officer for the Commonwealth of Pennsylvania. Every other person identified by the Board did return to their position as a correctional officer for the Commonwealth of Pennsylvania. Mr. Parke's personal decision to leave his employment with the Commonwealth of Pennsylvania would have rendered him unable to be a member of BARSUA or PSCOA since all members of PSCOA are correctional officers and all the putative members of BARSUA require that an individual be selected from the ranks of correctional officers.

Thus, any claim for *Transmarine* back pay should be cut off by Mr. Parke's decision to leave the only position that would permit him to continue as a Correctional Officer and BARSUA member. The use of his interim earnings at his position at the Bridges at Bent Creek which occurred after he left the employment of the Commonwealth are entirely irrelevant.

INTERIM EARNINGS

3(a) It is admitted that the Board calculated interim earnings in the manner set forth in Section 3(a). It is denied that the amount that the Board claims is owed is actually owed. By way of further answer, PSCOA bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order. As PSCOA

has indicated in its Answer, Mr. Parke's decision to leave the employment of the Commonwealth should end any obligation for PSCOA to pay him any *Transmarine* remedy.

3(b) It is admitted that the Board calculated interim earnings in the manner set forth in Section 3(a). It is denied that the amount that the Board claims is owed is actually owed.

TRANSMARINE NET BACKPAY CALCULATION

4(a) Admitted and Denied. It is admitted that the Board calculated quarterly net back pay in the manner set forth in Section 4(a). It is denied that the sum set forth in 4(c) is owed. By way of further answer, PSCOA avers and contends that it bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

4(b) Admitted and Denied. It is admitted that the Board calculated quarterly net back pay in the manner set forth in Section 4(b). It is denied that the sum set forth in 4(c) is owed. By way of further answer, PSCOA avers and contends that it bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

4(c) Admitted and Denied. It is admitted that the Board calculated quarterly net back pay in the manner set forth in Section 4(c). It is denied that the sum set forth in 4(c) is owed. By

way of further answer, PSCOA avers and contends that it bargained to impasse with the Business Agents Representing State Union Employees Association (BARSUA) on April 11, 2012 following a bargaining session held on April 4, 2012. PSCOA avers that, since the Board itself identified reaching impasse as a precondition to concluding any *Transmarine* remedy, the impasse reached as well as its implementation by PSCOA satisfied the provisions of the Decision and Order.

SUMMARY

PSCOA has already indicated its belief that it has complied with the Board's Order. In addition, it is a material fact that BARSUA is no longer a functioning union. PSCOA has been informed via affidavit that there are no members and no officers of BARSUA extant. As such, even if—only arguendo—PSCOA would be compelled to revisit the issue of impasse as the Regional Director contends, there is and was no one with whom to bargain. As such, PSCOA seeks an order dismissing the Compliance Specification as it contends that it has reached a bona fide impasse and therefore complied with the Board's Order.

Respectfully submitted,

By: _____

Michael McAuliffe Miller
Attorney I.D. No. 78507
ECKERT SEAMANS CHERIN & MELLOTT, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-7174

Attorney for PSCOA

Date: March 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2014, a true and correct copy of the foregoing *Answer to Compliance Specification and Notice of Hearing* was served via Hand Delivery, upon the following:

Lawrence Blackwell, Vice President
Business Agents Representing State Union
Employees Association
106 Locust Street
Beech Creek, PA 16822

Henry R. Protas
NLRB, Region Four
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Michael McAuliffe Miller

Backpay at the rate of their normal wages (*without deducting interim earnings*) for a 2-week period in the following amounts:

Lee Dyches $4,740.70;
Shawn Hood $4,294.11;
Patricia Hurd $4,202.21;
John Miller $3,862.00:
Bill Parke $4,303.88;

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The removed business agents were paid for one week (August 22, 2010 to August 28, 2010) after they were removed when no obligation to do so existed. The removed business agents received the following amounts of pay for August 22, 2010 to August 28, 2010 when they did not work:

Lee Dyches $2.370.35;
Shawn Hood $2,147.05;
Patricia Hurd $2,101.10;
John Miller $1,931:
Bill Parke $2,151.94;

The removed business agents were paid invalid and unsubstantiated mileage reimbursement for July 1, 2007 to June 30, 2010. The information included part of a Forensic Investigation conducted by Bruce J. Brown, CPA/ABV, CFF, CVA. The removed business agents received the following amounts of invalid and unsubstantiated mileage reimbursement for July 1, 2007 to June 30, 2010:

Lee Dyches $79,860;
Shawn Hood $71,623;
Patricia Hurd $9,450;
John Miller $49,888.

Commonwealth of Pennsylvania

Employee		Fund	Cost center	G/L Account	Order	7/23/2010	8/6/2010	8/20/2010	9/3/2010	9/17/2010	10/1/2010	10/15/2010	TOTALS
23493	Roy C Pinto	1001309000	1117323023	6111000	B77048000000	$ 703.92							$ 703.92
23493	Roy C Pinto	1001309000	1117323023	6142000	B77048000000	$ 58.37							$ 58.37
23493	Roy C Pinto	1001309000	1117323023	6143000	B77048000000	$ 70.93							$ 70.93
23493	Roy C Pinto	1001309000	1117323023	6144000	B77048000000	$ 16.59							$ 16.59
23493	Roy C Pinto	1001309000	1117323023	6145000	B77048000000	$ 46.83							$ 46.83
23493	Roy C Pinto	1001309000	1117323023	6146000	B77048000000	$ 28.88							$ 28.88
23493	Roy C Pinto	1001309000	1117323023	6147000	B77048000000	$ 1.26							$ 1.26
23493	Roy C Pinto	1001309000	1117323023	6148000	B77048000000	$ 128.41							$ 128.41
23493	Roy C Pinto	1001309000	1117323023	6151000	B77048000000	$ 20.77							$ 20.77
23493	Roy C Pinto	1001309000	1117323023	6164010	B77048000000	$ 450.00							$ 450.00
23493	Roy C Pinto	1001310000	1117323023	6111000 W	B77048000000	$ 1,464.00	$ 2,440.00	$ 2,440.00	$ 2,440.00	$ 2,440.00	$ 2,196.00	$ 2,440.00	$ 15,860.00
23493	Roy C Pinto	1001310000	1117323023	6111060	B77048000000	$ 244.00					$ 244.00		$ 488.00
23493	Roy C Pinto	1001310000	1117323023	6142000 HOSP	B77048000000	$ 141.63	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,341.63
23493	Roy C Pinto	1001310000	1117323023	6143000 TAX	B77048000000	$ 105.01	$ 146.75	$ 146.74	$ 146.74	$ 146.74	$ 146.74	$ 146.74	$ 985.46
23493	Roy C Pinto	1001310000	1117323023	6144000	B77048000000	$ 24.56	$ 34.32	$ 34.32	$ 34.31	$ 34.32	$ 34.32	$ 34.32	$ 230.47
23493	Roy C Pinto	1001310000	1117323023	6145000 ALT	B77048000000	$ 91.55	$ 155.18	$ 155.18	$ 155.18	$ 155.18	$ 155.18	$ 155.18	$ 1,022.63
23493	Roy C Pinto	1001310000	1117323023	6146000 W/C	B77048000000	$ 42.75	$ 61.07	$ 61.07	$ 61.07	$ 61.07	$ 61.07	$ 61.07	$ 409.17
23493	Roy C Pinto	1001310000	1117323023	6147000 LIFE	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 28.91
23493	Roy C Pinto	1001310000	1117323023	6148000 HEALTH	B77048000000	$ 311.59	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,951.59
23493	Roy C Pinto	1001310000	1117323023	6151000 LEAVE	B77048000000	$ 30.74	$ 43.92	$ 43.92	$ 43.92	$ 43.92	$ 43.92	$ 43.92	$ 294.26
	TOTAL 23493					$ 3,984.84	$ 3,525.55	$ 3,525.54	$ 3,525.53	$ 3,525.54	$ 3,525.54	$ 3,525.54	$ 25,138.08
33180	Edward R Mcconnell	1001309000	1117323023	6111000	B77048000000		$ 732.72						$ 732.72
33180	Edward R Mcconnell	1001309000	1117323023	6142000	B77048000000		$ 58.37						$ 58.37
33180	Edward R Mcconnell	1001309000	1117323023	6143000	B77048000000		$ 44.74						$ 44.74
33180	Edward R Mcconnell	1001309000	1117323023	6144000	B77048000000		$ 10.46						$ 10.46
33180	Edward R Mcconnell	1001309000	1117323023	6145000	B77048000000		$ 46.60						$ 46.60
33180	Edward R Mcconnell	1001309000	1117323023	6145000	#		$ 59.28						$ 59.28
33180	Edward R Mcconnell	1001309000	1117323023	6146000	B77048000000		$ 18.34						$ 18.34
33180	Edward R Mcconnell	1001309000	1117323023	6147000	B77048000000		$ 1.26						$ 1.26
33180	Edward R Mcconnell	1001309000	1117323023	6148000	B77048000000		$ 128.41						$ 128.41
33180	Edward R Mcconnell	1001309000	1117323023	6151000	B77048000000		$ 13.19						$ 13.19
33180	Edward R Mcconnell	1001310000	1117323023	6111000	B77048000000		$ 4,318.00	$ 2,540.00	$ 1,244.60				$ 8,102.60
33180	Edward R Mcconnell	1001310000	1117323023	6111010	B77048000000				$ 533.40				$ 533.40
33180	Edward R Mcconnell	1001310000	1117323023	6111060	B77048000000								$ 0.00
33180	Edward R Mcconnell	1001310000	1117323023	6142000	B77048000000		$ 341.63	$ 200.00	$ 140.00				$ 681.63
33180	Edward R Mcconnell	1001310000	1117323023	6143000	B77048000000		$ 263.68	$ 152.76	$ 106.93				$ 523.37
33180	Edward R Mcconnell	1001310000	1117323023	6144000	B77048000000		$ 61.67	$ 35.73	$ 25.00				$ 122.40
33180	Edward R Mcconnell	1001310000	1117323023	6145000	B77048000000		$ 274.62	$ 161.54	$ 113.08				$ 549.24
33180	Edward R Mcconnell	1001310000	1117323023	6146000	B77048000000		$ 108.08	$ 63.58	$ 44.51				$ 216.17
33180	Edward R Mcconnell	1001310000	1117323023	6147000	B77048000000		$ 7.36	$ 4.31	$ 3.02				$ 14.69
33180	Edward R Mcconnell	1001310000	1117323023	6148000	B77048000000		$ 751.59	$ 440.00	$ 308.00				$ 1,499.59
33180	Edward R Mcconnell	1001310000	1117323023	6151000	B77048000000		$ 77.72	$ 45.72	$ 32.00				$ 155.44
	TOTAL 33180					$ 0.00	$ 7,317.72	$ 3,643.64	$ 2,550.53	$ 0.00	$ 0.00	$ 0.00	$ 13,511.89
121006	Rhonda L Barger	1001309000	1115823023	6111000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6112000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6132000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6142000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6143000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6144000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6145000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6146000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6147000	#								$ 0.00

													$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6148000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6151000	#								$ 0.00
121006	Rhonda L Barger	1001309000	1115823023	6164010	#					$ 1,276.35	$ 1,562.88	$ 2,604.80	$ 5,444.03
121006	Rhonda L Barger	1001310000	1115823023	6111000	#					$ 547.01	$ 781.44		$ 1,328.45
121006	Rhonda L Barger	1001310000	1115823023	6111010	#						$ 260.48		$ 260.48
121006	Rhonda L Barger	1001310000	1115823023	6111060	#					$ 0.06	$ 6.00		$ 6.06
121006	Rhonda L Barger	1001310000	1115823023	6112000	#					$ 1.71	$ 195.36		$ 197.07
121006	Rhonda L Barger	1001310000	1115823023	6132000	#					$ 140.00	$ 200.00	$ 200.00	$ 540.00
121006	Rhonda L Barger	1001310000	1115823023	6142000	#					$ 111.46	$ 171.56	$ 159.08	$ 442.10
121006	Rhonda L Barger	1001310000	1115823023	6143000	#					$ 26.07	$ 40.12	$ 37.21	$ 103.40
121006	Rhonda L Barger	1001310000	1115823023	6144000	#					$ 116.08	$ 178.47	$ 165.67	$ 460.22
121006	Rhonda L Barger	1001310000	1115823023	6145000	#					$ 45.68	$ 70.24	$ 65.20	$ 181.12
121006	Rhonda L Barger	1001310000	1115823023	6146000	#					$ 3.02	$ 4.31	$ 4.31	$ 11.64
121006	Rhonda L Barger	1001310000	1115823023	6147000	#					$ 308.00	$ 440.00	$ 440.00	$ 1,188.00
121006	Rhonda L Barger	1001310000	1115823023	6148000	#					$ 32.85	$ 50.51	$ 46.89	$ 130.25
121006	Rhonda L Barger	1001310000	1115823023	6151000	#								
TOTAL 121006						$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 2,608.28	$ 3,961.37	$ 3,723.16	$ 10,292.81
134331	James D Chernavage	1001309000	1117023023	6111000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6142000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6143000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6144000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6145000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6146000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6147000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6148000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6151000	B77048000000								$ 0.00
134331	James D Chernavage	1001309000	1117023023	6164010	B77048000000				$ 547.20	$ 2,280.00	$ 2,052.00	$ 2,280.00	$ 7,159.20
134331	James D Chernavage	1001310000	1117023023	6111000	B77048000000				$ 136.80				$ 136.80
134331	James D Chernavage	1001310000	1117023023	6111010	B77048000000						$ 228.00		$ 228.00
134331	James D Chernavage	1001310000	1117023023	6111060	B77048000000				$ 60.00	$ 200.00	$ 200.00	$ 200.00	$ 660.00
134331	James D Chernavage	1001310000	1117023023	6142000	B77048000000				$ 41.14	$ 137.11	$ 137.12	$ 137.12	$ 452.49
134331	James D Chernavage	1001310000	1117023023	6143000	B77048000000				$ 9.62	$ 32.07	$ 32.07	$ 32.07	$ 105.83
134331	James D Chernavage	1001310000	1117023023	6144000	B77048000000				$ 43.50	$ 145.01	$ 145.01	$ 145.01	$ 478.53
134331	James D Chernavage	1001310000	1117023023	6145000	B77048000000				$ 17.12	$ 57.07	$ 57.07	$ 57.07	$ 188.33
134331	James D Chernavage	1001310000	1117023023	6146000	B77048000000				$ 1.29	$ 4.31	$ 4.31	$ 4.31	$ 14.22
134331	James D Chernavage	1001310000	1117023023	6147000	B77048000000				$ 132.00	$ 440.00	$ 440.00	$ 440.00	$ 1,452.00
134331	James D Chernavage	1001310000	1117023023	6148000	B77048000000				$ 12.31	$ 41.04	$ 41.04	$ 41.04	$ 135.43
134331	James D Chernavage	1001310000	1117023023	6151000	B77048000000								
TOTAL 134331						$ 0.00	$ 0.00	$ 0.00	$ 1,000.99	$ 3,336.61	$ 3,336.62	$ 3,336.62	$ 11,010.84
404120	Shawn P Hood	1001309000	1116423023	6111000	#	$ 968.32							$ 968.32
404120	Shawn P Hood	1001309000	1116423023	6142000	#	$ 78.13							$ 78.13
404120	Shawn P Hood	1001309000	1116423023	6143000	#	$ 86.45							$ 86.45
404120	Shawn P Hood	1001309000	1116423023	6144000	#	$ 20.21							$ 20.21
404120	Shawn P Hood	1001309000	1116423023	6145000	#	$ 60.84							$ 60.84
404120	Shawn P Hood	1001309000	1116423023	6146000	#	$ 35.50							$ 35.50
404120	Shawn P Hood	1001309000	1116423023	6147000	#	$ 1.68							$ 1.68
404120	Shawn P Hood	1001309000	1116423023	6148000	#	$ 171.88							$ 171.88
404120	Shawn P Hood	1001309000	1116423023	6151000	#	$ 25.53							$ 25.53
404120	Shawn P Hood	1001309000	1116423023	6164010	#	$ 450.00							$ 450.00
404120	Shawn P Hood	1001310000	1116423023	6111000	#	$ 1,510.56	$ 2,517.60	$ 2,517.60	$ 2,517.60	$ 629.40			$ 9,692.76
404120	Shawn P Hood	1001310000	1116423023	6111010	#					$ 629.40			$ 629.40
404120	Shawn P Hood	1001310000	1116423023	6111060	#								$ 0.00
404120	Shawn P Hood	1001310000	1116423023	6142000	#	$ 121.87	$ 200.00	$ 200.00	$ 200.00	$ 100.00			$ 821.87

404120	Shawn P Hood	1001310000	1116423023	6143000	#	$ 92.06	$ 151.41	$ 151.41	$ 151.41	$ 75.71			$ 622.00
404120	Shawn P Hood	1001310000	1116423023	6144000	#	$ 21.54	$ 35.41	$ 35.41	$ 35.41	$ 17.71			$ 145.48
404120	Shawn P Hood	1001310000	1116423023	6145000	#	$ 81.32	$ 160.12	$ 160.12	$ 160.12	$ 80.06			$ 641.74
404120	Shawn P Hood	1001310000	1116423023	6146000	#	$ 37.81	$ 63.02	$ 63.02	$ 63.02	$ 31.51			$ 258.38
404120	Shawn P Hood	1001310000	1116423023	6147000	#	$ 2.63	$ 4.31	$ 4.31	$ 4.31	$ 2.16			$ 17.72
404120	Shawn P Hood	1001310000	1116423023	6148000	#	$ 268.12	$ 440.00	$ 440.00	$ 440.00	$ 220.00			$ 1,808.12
404120	Shawn P Hood	1001310000	1116423023	6151000	#	$ 27.19	$ 45.32	$ 45.32	$ 45.32	$ 22.66			$ 185.81
		TOTAL 404120				$ 4,061.64	$ 3,617.19	$ 3,617.19	$ 3,617.19	$ 1,808.60	$ 0.00	$ 0.00	$ 16,721.81
422638	Jason C Bloom	1001309000	1114723023	6111000	B77048000000		-$ 27.89						-$ 27.89
422638	Jason C Bloom	1001309000	1114723023	6111010	B77048000000		$ 27.89						$ 27.89
422638	Jason C Bloom	1001309000	1114723023	6142000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6143000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6144000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6145000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6146000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6147000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6148000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6151000	B77048000000								$ 0.00
422638	Jason C Bloom	1001309000	1114723023	6164010	B77048000000								$ 0.00
422638	Jason C Bloom	1001310000	1114723023	6111000	B77048000000		$ 278.40		$ 5,568.00	$ 2,320.00	$ 2,088.00	$ 2,320.00	$ 12,574.40
422638	Jason C Bloom	1001310000	1114723023	6111010	B77048000000		$ 278.40						$ 278.40
422638	Jason C Bloom	1001310000	1114723023	6111060	B77048000000						$ 232.00		$ 232.00
422638	Jason C Bloom	1001310000	1114723023	6142000	B77048000000		$ 80.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,080.00
422638	Jason C Bloom	1001310000	1114723023	6143000	B77048000000		$ 32.80		$ 340.90	$ 139.52	$ 139.53	$ 139.52	$ 792.27
422638	Jason C Bloom	1001310000	1114723023	6144000	B77048000000		$ 7.67		$ 79.73	$ 32.63	$ 32.63	$ 32.63	$ 185.29
422638	Jason C Bloom	1001310000	1114723023	6145000	B77048000000		$ 35.41		$ 354.12	$ 147.55	$ 147.55	$ 147.55	$ 832.18
422638	Jason C Bloom	1001310000	1114723023	6146000	B77048000000		$ 13.94		$ 139.37	$ 58.07	$ 58.07	$ 58.07	$ 327.52
422638	Jason C Bloom	1001310000	1114723023	6147000	B77048000000		$ 1.72	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 23.27
422638	Jason C Bloom	1001310000	1114723023	6148000	B77048000000		$ 176.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,376.00
422638	Jason C Bloom	1001310000	1114723023	6151000	B77048000000		$ 10.02		$ 100.22	$ 41.76	$ 41.76	$ 41.76	$ 235.52
		TOTAL 422638				$ 0.00	$ 914.36	$ 644.31	$ 7,226.65	$ 3,383.84	$ 3,383.85	$ 3,383.84	$ 18,936.85
426362	Donald G Mcnany	1001309000	1115523023	6111000	B77048000000	$ 892.48							$ 892.48
426362	Donald G Mcnany	1001309000	1115523023	6112000	B77048000000	$ 32.00							$ 32.00
426362	Donald G Mcnany	1001309000	1115523023	6142000	B77048000000	$ 78.13							$ 78.13
426362	Donald G Mcnany	1001309000	1115523023	6143000	B77048000000	$ 83.83							$ 83.83
426362	Donald G Mcnany	1001309000	1115523023	6144000	B77048000000	$ 19.61							$ 19.61
426362	Donald G Mcnany	1001309000	1115523023	6145000	B77048000000	$ 58.65							$ 58.65
426362	Donald G Mcnany	1001309000	1115523023	6146000	B77048000000	$ 34.40							$ 34.40
426362	Donald G Mcnany	1001309000	1115523023	6147000	B77048000000	$ 1.68							$ 1.68
426362	Donald G Mcnany	1001309000	1115523023	6148000	B77048000000	$ 171.90							$ 171.90
426362	Donald G Mcnany	1001309000	1115523023	6151000	B77048000000	$ 24.74							$ 24.74
426362	Donald G Mcnany	1001309000	1115523023	6164010	B77048000000	$ 450.00							$ 450.00
426362	Donald G Mcnany	1001310000	1115523023	6111000	B77048000000	$ 1,392.00	$ 2,320.00	$ 2,320.00					$ 6,032.00
426362	Donald G Mcnany	1001310000	1115523023	6111010	B77048000000								$ 0.00
426362	Donald G Mcnany	1001310000	1115523023	6111070	B77048000000								$ 0.00
426362	Donald G Mcnany	1001310000	1115523023	6111130	B77048000000								$ 0.00
426362	Donald G Mcnany	1001310000	1115523023	6112000	B77048000000	$ 48.00	$ 80.00	$ 80.00					$ 208.00
426362	Donald G Mcnany	1001310000	1115523023	6132000	B77048000000								$ 0.00
426362	Donald G Mcnany	1001310000	1115523023	6134000	B77048000000								$ 0.00
426362	Donald G Mcnany	1001310000	1115523023	6142000	B77048000000	$ 121.87	$ 200.00	$ 200.00					$ 521.87
426362	Donald G Mcnany	1001310000	1115523023	6143000	B77048000000	$ 87.83	$ 144.49	$ 144.48					$ 376.80
426362	Donald G Mcnany	1001310000	1115523023	6144000	B77048000000	$ 20.53	$ 33.79	$ 33.79					$ 88.11
426362	Donald G Mcnany	1001310000	1115523023	6145000	B77048000000	$ 76.94	$ 152.64	$ 152.64					$ 382.22

													$ 156.19
426362	Donald G Mcnany	1001310000	1115523023	6146000	B77048000000	$ 36.05	$ 60.07	$ 60.07					$ 11.25
426362	Donald G Mcnany	1001310000	1115523023	6147000	B77048000000	$ 2.63	$ 4.31	$ 4.31					$ 1,148.10
426362	Donald G Mcnany	1001310000	1115523023	6148000	B77048000000	$ 268.10	$ 440.00	$ 440.00					$ 112.32
426362	Donald G Mcnany	1001310000	1115523023	6151000	B77048000000	$ 25.92	$ 43.20	$ 43.20					$ 10,884.28
		TOTAL 426362				$ 3,927.29	$ 3,478.50	$ 3,478.49	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 634.56
443490	Lee J Dyches III	1001309000	1113723023	6111000	B77048000000	$ 634.56							$ 58.36
443490	Lee J Dyches III	1001309000	1113723023	6142000	B77048000000	$ 58.36							$ 66.13
443490	Lee J Dyches III	1001309000	1113723023	6143000	B77048000000	$ 66.13							$ 15.47
443490	Lee J Dyches III	1001309000	1113723023	6144000	B77048000000	$ 15.47							$ 43.62
443490	Lee J Dyches III	1001309000	1113723023	6145000	B77048000000	$ 43.62							$ 27.14
443490	Lee J Dyches III	1001309000	1113723023	6146000	B77048000000	$ 27.14							$ 1.26
443490	Lee J Dyches III	1001309000	1113723023	6147000	B77048000000	$ 1.26							$ 128.40
443490	Lee J Dyches III	1001309000	1113723023	6148000	B77048000000	$ 128.40							$ 19.52
443490	Lee J Dyches III	1001309000	1113723023	6151000	B77048000000	$ 19.52							$ 450.00
443490	Lee J Dyches III	1001309000	1113723023	6164010	B77048000000	$ 450.00							$ 9,020.00
443490	Lee J Dyches III	1001310000	1113723023	6111000	B77048000000	$ 1,320.00	$ 2,200.00	$ 2,200.00	$ 2,200.00	$ 1,100.00			$ 0.00
443490	Lee J Dyches III	1001310000	1113723023	6111020	B77048000000								$ 220.00
443490	Lee J Dyches III	1001310000	1113723023	6111060	B77048000000	$ 220.00							$ 841.64
443490	Lee J Dyches III	1001310000	1113723023	6142000	B77048000000	$ 141.64	$ 200.00	$ 200.00	$ 200.00	$ 100.00			$ 556.98
443490	Lee J Dyches III	1001310000	1113723023	6143000	B77048000000	$ 93.90	$ 132.31	$ 132.30	$ 132.31	$ 66.16			$ 130.26
443490	Lee J Dyches III	1001310000	1113723023	6144000	B77048000000	$ 21.95	$ 30.95	$ 30.94	$ 30.94	$ 15.48			$ 570.87
443490	Lee J Dyches III	1001310000	1113723023	6145000	B77048000000	$ 81.15	$ 139.92	$ 139.92	$ 139.92	$ 69.96			$ 231.30
443490	Lee J Dyches III	1001310000	1113723023	6146000	B77048000000	$ 38.55	$ 55.07	$ 55.07	$ 55.07	$ 27.54			$ 18.14
443490	Lee J Dyches III	1001310000	1113723023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 2.16			$ 1,851.60
443490	Lee J Dyches III	1001310000	1113723023	6148000	B77048000000	$ 311.60	$ 440.00	$ 440.00	$ 440.00	$ 220.00			$ 166.32
443490	Lee J Dyches III	1001310000	1113723023	6151000	B77048000000	$ 27.72	$ 39.60	$ 39.60	$ 39.60	$ 19.80			$ 15,051.55
		TOTAL 443490				$ 3,704.02	$ 3,242.16	$ 3,242.14	$ 3,242.15	$ 1,621.08	$ 0.00	$ 0.00	$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6111000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6142000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6143000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6144000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6145000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6146000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6147000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6148000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6151000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001309000	1117823023	6164010	B77048000000				$ 2,280.00	$ 2,280.00	$ 2,300.00	$ 2,300.00	$ 9,160.00
445795	Ralph G Tressler Jr	1001310000	1117823023	6111000	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001310000	1117823023	6111010	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001310000	1117823023	6111060	B77048000000								$ 0.00
445795	Ralph G Tressler Jr	1001310000	1117823023	6111120	B77048000000				$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 800.00
445795	Ralph G Tressler Jr	1001310000	1117823023	6142000	B77048000000				$ 137.12	$ 137.12	$ 138.32	$ 138.32	$ 550.88
445795	Ralph G Tressler Jr	1001310000	1117823023	6143000	B77048000000				$ 32.07	$ 32.07	$ 32.34	$ 32.35	$ 128.83
445795	Ralph G Tressler Jr	1001310000	1117823023	6144000	B77048000000				$ 145.01	$ 145.01	$ 146.28	$ 146.28	$ 582.58
445795	Ralph G Tressler Jr	1001310000	1117823023	6145000	B77048000000				$ 57.07	$ 57.07	$ 57.57	$ 57.57	$ 229.28
445795	Ralph G Tressler Jr	1001310000	1117823023	6146000	B77048000000				$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 17.24
445795	Ralph G Tressler Jr	1001310000	1117823023	6147000	B77048000000				$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 1,760.00
445795	Ralph G Tressler Jr	1001310000	1117823023	6148000	B77048000000				$ 41.04	$ 41.04	$ 41.40	$ 41.40	$ 164.88
445795	Ralph G Tressler Jr	1001310000	1117823023	6151000	B77048000000								
		TOTAL 445795				$ 0.00	$ 0.00	$ 0.00	$ 3,336.62	$ 3,336.62	$ 3,360.22	$ 3,360.23	$ 13,393.69
447337	Robert E Grajeda Jr	1001309000	1114723023	6111000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6111010	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6111030	B77048000000								$ 0.00

447337	Robert E Grajeda Jr	1001309000	1114723023	6111060	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6112000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6132000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6142000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6143000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6144000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6145000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6146000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6147000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6148000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6151000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001309000	1114723023	6164010	B77048000000					$ 1,436.40	$ 2,280.00	$ 2,280.00	$ 5,996.40
447337	Robert E Grajeda Jr	1001310000	1114723023	6111000	B77048000000					$ 159.60			$ 159.60
447337	Robert E Grajeda Jr	1001310000	1114723023	6111010	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001310000	1114723023	6111060	B77048000000					$ 0.08			$ 0.08
447337	Robert E Grajeda Jr	1001310000	1114723023	6112000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001310000	1114723023	6131000	B77048000000					$ 2.39			$ 2.39
447337	Robert E Grajeda Jr	1001310000	1114723023	6132000	B77048000000								$ 0.00
447337	Robert E Grajeda Jr	1001310000	1114723023	6134000	B77048000000					$ 140.00	$ 200.00	$ 200.00	$ 540.00
447337	Robert E Grajeda Jr	1001310000	1114723023	6142000	B77048000000					$ 97.62	$ 139.24	$ 139.24	$ 376.10
447337	Robert E Grajeda Jr	1001310000	1114723023	6143000	B77048000000					$ 22.83	$ 32.56	$ 32.56	$ 87.95
447337	Robert E Grajeda Jr	1001310000	1114723023	6144000	B77048000000					$ 101.66	$ 145.01	$ 145.01	$ 391.68
447337	Robert E Grajeda Jr	1001310000	1114723023	6145000	B77048000000					$ 40.01	$ 57.07	$ 57.07	$ 154.15
447337	Robert E Grajeda Jr	1001310000	1114723023	6146000	B77048000000					$ 3.02	$ 4.31	$ 4.31	$ 11.64
447337	Robert E Grajeda Jr	1001310000	1114723023	6147000	B77048000000					$ 308.00	$ 440.00	$ 440.00	$ 1,188.00
447337	Robert E Grajeda Jr	1001310000	1114723023	6148000	B77048000000					$ 28.77	$ 41.04	$ 41.04	$ 110.85
447337	Robert E Grajeda Jr	1001310000	1114723023	6151000	B77048000000								$ 0.00
		TOTAL 447337				$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 2,340.39	$ 3,339.23	$ 3,339.23	$ 9,018.85
448565	Robert J Storm	1001309000	1115323023	6111000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6111010	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6142000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6143000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6144000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6145000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6146000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6147000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6148000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6151000	B77048000000								$ 0.00
448565	Robert J Storm	1001309000	1115323023	6164010	B77048000000				$ 410.40	$ 2,280.00	$ 2,052.00	$ 2,280.00	$ 7,022.40
448565	Robert J Storm	1001310000	1115323023	6111000	B77048000000				$ 273.60				$ 273.60
448565	Robert J Storm	1001310000	1115323023	6111010	B77048000000						$ 228.00		$ 228.00
448565	Robert J Storm	1001310000	1115323023	6111060	B77048000000								$ 0.00
448565	Robert J Storm	1001310000	1115323023	6111070	B77048000000								$ 0.00
448565	Robert J Storm	1001310000	1115323023	6112000	B77048000000								$ 0.00
448565	Robert J Storm	1001310000	1115323023	6132000	B77048000000				$ 60.00	$ 200.00	$ 200.00	$ 200.00	$ 660.00
448565	Robert J Storm	1001310000	1115323023	6142000	B77048000000				$ 41.77	$ 139.24	$ 139.24	$ 139.24	$ 459.49
448565	Robert J Storm	1001310000	1115323023	6143000	B77048000000				$ 9.77	$ 32.56	$ 32.57	$ 32.56	$ 107.46
448565	Robert J Storm	1001310000	1115323023	6144000	B77048000000				$ 43.50	$ 145.01	$ 145.01	$ 145.01	$ 478.53
448565	Robert J Storm	1001310000	1115323023	6145000	B77048000000				$ 17.12	$ 57.07	$ 57.07	$ 57.07	$ 188.33
448565	Robert J Storm	1001310000	1115323023	6146000	B77048000000				$ 1.29	$ 4.31	$ 4.31	$ 4.31	$ 14.22
448565	Robert J Storm	1001310000	1115323023	6147000	B77048000000				$ 132.00	$ 440.00	$ 440.00	$ 440.00	$ 1,452.00
448565	Robert J Storm	1001310000	1115323023	6148000	B77048000000				$ 12.31	$ 41.04	$ 41.04	$ 41.04	$ 135.43
448565	Robert J Storm	1001310000	1115323023	6151000	B77048000000								

		TOTAL 448565				$ 0.00	$ 0.00	$ 0.00	$ 1,001.77	$ 3,339.23	$ 3,339.24	$ 3,339.23	$ 11,019.47
449434	Michael M Machita	1001309000	1115323023	6111000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6111060	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6111120	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6112000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6132000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6142000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6143000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6144000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6145000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6146000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6147000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6148000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6151000	#								$ 0.00
449434	Michael M Machita	1001309000	1115323023	6164010	#					$ 1,385.66	$ 2,474.40	$ 2,474.40	$ 6,334.46
449434	Michael M Machita	1001310000	1115323023	6111000	#					$ 346.42			$ 346.42
449434	Michael M Machita	1001310000	1115323023	6111010	#								$ 0.00
449434	Michael M Machita	1001310000	1115323023	6111060	#								$ 0.00
449434	Michael M Machita	1001310000	1115323023	6111120	#					$ 0.81			$ 0.81
449434	Michael M Machita	1001310000	1115323023	6112000	#					$ 25.01			$ 25.01
449434	Michael M Machita	1001310000	1115323023	6132000	#					$ 140.00	$ 200.00	$ 200.00	$ 540.00
449434	Michael M Machita	1001310000	1115323023	6142000	#					$ 105.77	$ 148.81	$ 148.81	$ 403.39
449434	Michael M Machita	1001310000	1115323023	6143000	#					$ 24.73	$ 34.81	$ 34.80	$ 94.34
449434	Michael M Machita	1001310000	1115323023	6144000	#					$ 111.80	$ 157.37	$ 157.37	$ 426.54
449434	Michael M Machita	1001310000	1115323023	6145000	#					$ 44.00	$ 61.93	$ 61.93	$ 167.86
449434	Michael M Machita	1001310000	1115323023	6146000	#					$ 3.02	$ 4.31	$ 4.31	$ 11.64
449434	Michael M Machita	1001310000	1115323023	6147000	#					$ 308.00	$ 440.00	$ 440.00	$ 1,188.00
449434	Michael M Machita	1001310000	1115323023	6148000	#					$ 31.64	$ 44.54	$ 44.54	$ 120.72
449434	Michael M Machita	1001310000	1115323023	6151000	#								$ 9,659.20
		TOTAL 449434				$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 2,526.87	$ 3,566.17	$ 3,566.16	$ 9,659.20
451663	Timothy W Walsh	1001309000	1111823023	6111010	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6142000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6143000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6144000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6145000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6146000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6147000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6148000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6151000	#								$ 0.00
451663	Timothy W Walsh	1001309000	1111823023	6164010	#				$ 74.23	$ 2,474.40	$ 2,226.96	$ 2,474.40	$ 7,249.99
451663	Timothy W Walsh	1001310000	1111823023	6111000	#				$ 668.09				$ 668.09
451663	Timothy W Walsh	1001310000	1111823023	6111010	#						$ 247.44		$ 247.44
451663	Timothy W Walsh	1001310000	1111823023	6111060	#								$ 0.00
451663	Timothy W Walsh	1001310000	1111823023	6111070	#				$ 60.00	$ 200.00	$ 200.00	$ 200.00	$ 660.00
451663	Timothy W Walsh	1001310000	1111823023	6142000	#				$ 44.64	$ 148.81	$ 148.81	$ 148.81	$ 491.07
451663	Timothy W Walsh	1001310000	1111823023	6143000	#				$ 10.44	$ 34.80	$ 34.81	$ 34.80	$ 114.85
451663	Timothy W Walsh	1001310000	1111823023	6144000	#				$ 47.21	$ 157.37	$ 157.37	$ 157.37	$ 519.32
451663	Timothy W Walsh	1001310000	1111823023	6145000	#				$ 18.58	$ 61.93	$ 61.93	$ 61.93	$ 204.37
451663	Timothy W Walsh	1001310000	1111823023	6146000	#				$ 1.29	$ 4.31	$ 4.31	$ 4.31	$ 14.22
451663	Timothy W Walsh	1001310000	1111823023	6147000	#				$ 132.00	$ 440.00	$ 440.00	$ 440.00	$ 1,452.00
451663	Timothy W Walsh	1001310000	1111823023	6148000	#				$ 13.36	$ 44.54	$ 44.54	$ 44.54	$ 146.[illegible]
451663	Timothy W Walsh	1001310000	1111823023	6151000	#								$ 11,768.[illegible]
		TOTAL 451663				$ 0.00	$ 0.00	$ 0.00	$ 1,069.85	$ 3,566.16	$ 3,566.17	$ 3,566.16	$ 11,768.[illegible]

456364	Lawrence H Blackwell	1001309000	1117323023	6111000	#	$ 707.52							$ 707.52
456364	Lawrence H Blackwell	1001309000	1117323023	6142000	#	$ 58.36							$ 58.36
456364	Lawrence H Blackwell	1001309000	1117323023	6143000	#	$ 70.56							$ 70.56
456364	Lawrence H Blackwell	1001309000	1117323023	6144000	#	$ 16.49							$ 16.49
456364	Lawrence H Blackwell	1001309000	1117323023	6145000	#	$ 46.99							$ 46.99
456364	Lawrence H Blackwell	1001309000	1117323023	6146000	#	$ 28.97							$ 28.97
456364	Lawrence H Blackwell	1001309000	1117323023	6147000	#	$ 1.26							$ 1.26
456364	Lawrence H Blackwell	1001309000	1117323023	6148000	#	$ 128.40							$ 128.40
456364	Lawrence H Blackwell	1001309000	1117323023	6151000	#	$ 20.84			$ 21.22				$ 42.06
456364	Lawrence H Blackwell	1001309000	1117323023	6164010	#	$ 450.00							$ 450.00
456364	Lawrence H Blackwell	1001310000	1117323023	6111000	#	$ 1,471.68	$ 2,452.80	$ 2,452.80	$ 2,452.80	$ 2,207.52	$ 2,474.40	$ 2,474.40	$ 15,986.40
456364	Lawrence H Blackwell	1001310000	1117323023	6111010	#					$ 245.28			$ 245.28
456364	Lawrence H Blackwell	1001310000	1117323023	6111060	#	$ 245.28							$ 245.28
456364	Lawrence H Blackwell	1001310000	1117323023	6142000	#	$ 141.64	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,341.64
456364	Lawrence H Blackwell	1001310000	1117323023	6143000	#	$ 104.65	$ 147.51	$ 147.51	$ 147.51	$ 147.52	$ 148.81	$ 148.81	$ 992.32
456364	Lawrence H Blackwell	1001310000	1117323023	6144000	#	$ 24.48	$ 34.50	$ 34.50	$ 34.50	$ 34.50	$ 34.80	$ 34.80	$ 232.08
456364	Lawrence H Blackwell	1001310000	1117323023	6145000	#	$ 92.11	$ 156.00	$ 156.00	$ 156.00	$ 156.00	$ 157.37	$ 157.37	$ 1,030.85
456364	Lawrence H Blackwell	1001310000	1117323023	6146000	#	$ 42.98	$ 61.39	$ 61.39	$ 61.39	$ 61.39	$ 61.93	$ 61.93	$ 412.40
456364	Lawrence H Blackwell	1001310000	1117323023	6147000	#	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 28.91
456364	Lawrence H Blackwell	1001310000	1117323023	6148000	#	$ 311.60	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,951.60
456364	Lawrence H Blackwell	1001310000	1117323023	6151000	#	$ 30.90	$ 44.15	$ 44.15	$ 22.93	$ 44.15	$ 44.54	$ 44.54	$ 275.36
		TOTAL 456364				$ 3,997.76	$ 3,540.66	$ 3,540.66	$ 3,540.66	$ 3,540.67	$ 3,566.16	$ 3,566.16	$ 25,292.73
460458	Robert Allen Smith	1001309000	1110123061	6151000	#	$ 0.47							$ 0.47
460458	Robert Allen Smith	1001309000	1115523023	6111000	#	$ 471.69							$ 471.69
460458	Robert Allen Smith	1001309000	1115523023	6111010	#	-$ 0.01							-$ 0.01
460458	Robert Allen Smith	1001309000	1115523023	6112000	#	$ 14.40							$ 14.40
460458	Robert Allen Smith	1001309000	1115523023	6142000	#	$ 38.76							$ 38.76
460458	Robert Allen Smith	1001309000	1115523023	6143000	#	$ 57.08							$ 57.08
460458	Robert Allen Smith	1001309000	1115523023	6144000	#	$ 13.36							$ 13.36
460458	Robert Allen Smith	1001309000	1115523023	6145000	#	$ 34.91							$ 34.91
460458	Robert Allen Smith	1001309000	1115523023	6146000	#	$ 23.43							$ 23.43
460458	Robert Allen Smith	1001309000	1115523023	6147000	#	$ 0.84							$ 0.84
460458	Robert Allen Smith	1001309000	1115523023	6148000	#	$ 85.27							$ 85.27
460458	Robert Allen Smith	1001309000	1115523023	6151000	#	$ 51.62							$ 51.62
460458	Robert Allen Smith	1001309000	1115523023	6164010	#	$ 450.00							$ 450.00
460458	Robert Allen Smith	1001310000	1115523023	6111000	#	$ 1,962.24	$ 2,452.80	$ 2,452.80	$ 2,452.80	$ 2,452.80	$ 2,452.80	$ 2,452.80	$ 16,679.04
460458	Robert Allen Smith	1001310000	1115523023	6112000	#	$ 57.60	$ 72.00	$ 72.00	$ 72.00	$ 72.00	$ 72.00	$ 72.00	$ 489.60
460458	Robert Allen Smith	1001310000	1115523023	6142000	#	$ 161.24	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,361.24
460458	Robert Allen Smith	1001310000	1115523023	6143000	#	$ 123.17	$ 151.97	$ 151.98	$ 151.97	$ 151.98	$ 151.97	$ 151.98	$ 1,035.02
460458	Robert Allen Smith	1001310000	1115523023	6144000	#	$ 28.79	$ 35.55	$ 35.54	$ 35.54	$ 35.54	$ 35.55	$ 35.54	$ 242.05
460458	Robert Allen Smith	1001310000	1115523023	6145000	#	$ 108.91	$ 160.58	$ 160.58	$ 160.58	$ 160.58	$ 160.58	$ 160.58	$ 1,072.39
460458	Robert Allen Smith	1001310000	1115523023	6146000	#	$ 50.56	$ 63.20	$ 63.20	$ 63.20	$ 63.20	$ 63.20	$ 63.20	$ 429.76
460458	Robert Allen Smith	1001310000	1115523023	6147000	#	$ 3.47	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 29.33
460458	Robert Allen Smith	1001310000	1115523023	6148000	#	$ 354.73	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,994.73
460458	Robert Allen Smith	1001310000	1115523023	6151000	#	$ 1.12	$ 45.45	$ 45.45	$ 45.45	$ 45.45	$ 45.45	$ 45.45	$ 273.82
		TOTAL 460458				$ 4,093.65	$ 3,625.86	$ 3,625.86	$ 3,625.85	$ 3,625.86	$ 3,625.86	$ 3,625.86	$ 25,848.80
467526	Michael E Friederich	1001309000	1112223023	6111000	B77048000000	$ 569.76							$ 569.76
467526	Michael E Friederich	1001309000	1112223023	6112000	B77048000000	$ 24.00							$ 24.00
467526	Michael E Friederich	1001309000	1112223023	6142000	B77048000000	$ 58.37							$ 58.37
467526	Michael E Friederich	1001309000	1112223023	6143000	B77048000000	$ 63.69							$ 63.69
467526	Michael E Friederich	1001309000	1112223023	6144000	B77048000000	$ 14.89							$ 14.89
467526	Michael E Friederich	1001309000	1112223023	6145000	B77048000000	$ 41.65							$ 41.65
467526	Michael E Friederich	1001309000	1112223023	6146000	B77048000000	$ 26.12							$ 26.12

													$ 1.26
467526	Michael E Friederich	1001309000	1112223023	6147000	B77048000000	$ 1.26							$ 128.40
467526	Michael E Friederich	1001309000	1112223023	6148000	B77048000000	$ 128.40							$ 18.79
467526	Michael E Friederich	1001309000	1112223023	6151000	B77048000000	$ 18.79							$ 450.00
467526	Michael E Friederich	1001309000	1112223023	6164010	B77048000000	$ 450.00							$ 5,135.52
467526	Michael E Friederich	1001310000	1112223023	6111000	B77048000000	$ 1,185.12	$ 1,975.20	$ 1,975.20					$ 197.52
467526	Michael E Friederich	1001310000	1112223023	6111060	B77048000000	$ 197.52							$ 208.00
467526	Michael E Friederich	1001310000	1112223023	6112000	B77048000000	$ 48.00	$ 80.00	$ 80.00					$ 541.63
467526	Michael E Friederich	1001310000	1112223023	6142000	B77048000000	$ 141.63	$ 200.00	$ 200.00					$ 987.51
467526	Michael E Friederich	1001310000	1112223023	6143000	B77048000000	$ 87.30	$ 123.75	$ 776.46					$ 230.95
467526	Michael E Friederich	1001310000	1112223023	6144000	B77048000000	$ 20.42	$ 28.94	$ 181.59					$ 335.86
467526	Michael E Friederich	1001310000	1112223023	6145000	B77048000000	$ 74.44	$ 130.71	$ 130.71					$ 402.09
467526	Michael E Friederich	1001310000	1112223023	6146000	B77048000000	$ 35.81	$ 51.44	$ 314.84					$ 11.67
467526	Michael E Friederich	1001310000	1112223023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31					$ 1,191.60
467526	Michael E Friederich	1001310000	1112223023	6148000	B77048000000	$ 311.60	$ 440.00	$ 440.00					$ 289.15
467526	Michael E Friederich	1001310000	1112223023	6151000	B77048000000	$ 25.75	$ 36.99	$ 226.41					$ 60.75
467526	Michael E Friederich	1001310000	1112223023	6164010	B77048000000			$ 60.75					$ 10,989.18
		TOTAL 467526				$ 3,527.57	$ 3,071.34	$ 4,390.27	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 569.76
467736	Mark A Watson	1001309000	1117323023	6111000	B77048000000	$ 569.76							$ 58.37
467736	Mark A Watson	1001309000	1117323023	6142000	B77048000000	$ 58.37							$ 62.20
467736	Mark A Watson	1001309000	1117323023	6143000	B77048000000	$ 62.20							$ 14.55
467736	Mark A Watson	1001309000	1117323023	6144000	B77048000000	$ 14.55							$ 40.56
467736	Mark A Watson	1001309000	1117323023	6145000	B77048000000	$ 40.56							$ 25.52
467736	Mark A Watson	1001309000	1117323023	6146000	B77048000000	$ 25.52							$ 1.26
467736	Mark A Watson	1001309000	1117323023	6147000	B77048000000	$ 1.26							$ 128.40
467736	Mark A Watson	1001309000	1117323023	6148000	B77048000000	$ 128.40							$ 18.35
467736	Mark A Watson	1001309000	1117323023	6151000	B77048000000	$ 18.35							$ 450.00
467736	Mark A Watson	1001309000	1117323023	6164010	B77048000000	$ 450.00							$ 12,838.80
467736	Mark A Watson	1001310000	1117323023	6111000	B77048000000	$ 1,185.12	$ 1,975.20	$ 1,975.20	$ 1,975.20	$ 1,975.20	$ 1,777.68	$ 1,975.20	$ 395.04
467736	Mark A Watson	1001310000	1117323023	6111060	B77048000000	$ 197.52					$ 197.52		$ 1,341.63
467736	Mark A Watson	1001310000	1117323023	6142000	B77048000000	$ 141.63	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 797.06
467736	Mark A Watson	1001310000	1117323023	6143000	B77048000000	$ 84.33	$ 118.79	$ 118.78	$ 118.79	$ 118.79	$ 118.79	$ 118.79	$ 186.41
467736	Mark A Watson	1001310000	1117323023	6144000	B77048000000	$ 19.72	$ 27.78	$ 27.78	$ 27.79	$ 27.78	$ 27.78	$ 27.78	$ 825.18
467736	Mark A Watson	1001310000	1117323023	6145000	B77048000000	$ 71.46	$ 125.62	$ 125.62	$ 125.62	$ 125.62	$ 125.62	$ 125.62	$ 331.25
467736	Mark A Watson	1001310000	1117323023	6146000	B77048000000	$ 34.61	$ 49.44	$ 49.44	$ 49.44	$ 49.44	$ 49.44	$ 49.44	$ 28.91
467736	Mark A Watson	1001310000	1117323023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 2,951.60
467736	Mark A Watson	1001310000	1117323023	6148000	B77048000000	$ 311.60	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 238.19
467736	Mark A Watson	1001310000	1117323023	6151000	B77048000000	$ 24.89	$ 35.55	$ 35.55	$ 35.55	$ 35.55	$ 35.55	$ 35.55	$ 21,303.04
		TOTAL 467736				$ 3,442.90	$ 2,976.69	$ 2,976.68	$ 2,976.70	$ 2,976.69	$ 2,976.69	$ 2,976.69	$ 569.76
467744	John S Klett	1001309000	1112223023	6111000	B77048000000	$ 569.76							$ 24.00
467744	John S Klett	1001309000	1112223023	6112000	B77048000000	$ 24.00							$ 58.37
467744	John S Klett	1001309000	1112223023	6142000	B77048000000	$ 58.37							$ 63.69
467744	John S Klett	1001309000	1112223023	6143000	B77048000000	$ 63.69							$ 14.89
467744	John S Klett	1001309000	1112223023	6144000	B77048000000	$ 14.89							$ 41.65
467744	John S Klett	1001309000	1112223023	6145000	B77048000000	$ 41.65							$ 26.12
467744	John S Klett	1001309000	1112223023	6146000	B77048000000	$ 26.12							$ 1.26
467744	John S Klett	1001309000	1112223023	6147000	B77048000000	$ 1.26							$ 128.40
467744	John S Klett	1001309000	1112223023	6148000	B77048000000	$ 128.40							$ 18.79
467744	John S Klett	1001309000	1112223023	6151000	B77048000000	$ 18.79							$ 450.00
467744	John S Klett	1001309000	1112223023	6164010	B77048000000	$ 450.00							$ 12,838.80
467744	John S Klett	1001310000	1112223023	6111000	B77048000000	$ 1,185.12	$ 1,975.20	$ 1,975.20	$ 1,975.20	$ 1,975.20	$ 1,777.68	$ 1,975.20	$ 395.04
467744	John S Klett	1001310000	1112223023	6111060	B77048000000	$ 197.52					$ 197.52		$ 52.00
467744	John S Klett	1001310000	1112223023	6112000	B77048000000	$ 48.00	$ 80.00	$ 80.00	$ 80.00	$ 80.00	$ 72.00	$ 80.00	$ 1,341.63
467744	John S Klett	1001310000	1112223023	6142000	B77048000000	$ 141.63	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	

Commonwealth of Pennsylvania

467744	John S Klett	1001310000	1112223023	6143000	B77048000000	$ 87.30	$ 123.75	$ 123.75	$ 123.75	$ 123.74	$ 123.26	$ 123.75	$ 829.30
467744	John S Klett	1001310000	1112223023	6144000	B77048000000	$ 20.43	$ 28.94	$ 28.94	$ 28.94	$ 28.94	$ 28.83	$ 28.94	$ 193.96
467744	John S Klett	1001310000	1112223023	6145000	B77048000000	$ 74.44	$ 130.71	$ 130.71	$ 130.71	$ 130.71	$ 130.20	$ 130.71	$ 858.19
467744	John S Klett	1001310000	1112223023	6146000	B77048000000	$ 35.81	$ 51.44	$ 51.44	$ 51.44	$ 51.44	$ 51.24	$ 51.44	$ 344.25
467744	John S Klett	1001310000	1112223023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 28.91
467744	John S Klett	1001310000	1112223023	6148000	B77048000000	$ 311.60	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,951.60
467744	John S Klett	1001310000	1112223023	6151000	B77048000000	$ 25.75	$ 36.99	$ 36.99	$ 36.99	$ 36.99	$ 36.85	$ 36.99	$ 247.55
467744	John S Klett					$ 3,527.58	$ 3,071.34	$ 3,071.34	$ 3,071.34	$ 3,071.33	$ 3,061.89	$ 3,071.34	$ 21,946.16
	TOTAL 467744												
469671	William R Parke	1001309000	1114523023	6111000	#	$ 865.28							$ 865.28
469671	William R Parke	1001309000	1114523023	6112000	#	$ 32.00							$ 32.00
469671	William R Parke	1001309000	1114523023	6142000	#	$ 78.13							$ 78.13
469671	William R Parke	1001309000	1114523023	6143000	#	$ 82.86							$ 82.86
469671	William R Parke	1001309000	1114523023	6144000	#	$ 19.37							$ 19.37
469671	William R Parke	1001309000	1114523023	6145000	#	$ 57.29							$ 57.29
469671	William R Parke	1001309000	1114523023	6146000	#	$ 33.72							$ 33.72
469671	William R Parke	1001309000	1114523023	6147000	#	$ 1.68							$ 1.68
469671	William R Parke	1001309000	1114523023	6148000	#	$ 171.88							$ 171.88
469671	William R Parke	1001309000	1114523023	6151000	#	$ 24.25							$ 24.25
469671	William R Parke	1001309000	1114523023	6164010	#	$ 450.00							$ 450.00
469671	William R Parke	1001310000	1114523023	6111000	#	$ 1,349.76	$ 2,249.60	$ 2,249.60	$ 2,249.60	$ 1,124.80			$ 9,223.36
469671	William R Parke	1001310000	1114523023	6112000	#	$ 48.00	$ 80.00	$ 80.00	$ 80.00	$ 40.00			$ 328.00
469671	William R Parke	1001310000	1114523023	6142000	#	$ 121.87	$ 200.00	$ 200.00	$ 200.00	$ 100.00			$ 821.87
469671	William R Parke	1001310000	1114523023	6143000	#	$ 85.96	$ 140.25	$ 140.25	$ 140.26	$ 70.13			$ 576.85
469671	William R Parke	1001310000	1114523023	6144000	#	$ 20.11	$ 32.80	$ 32.80	$ 32.80	$ 16.40			$ 134.91
469671	William R Parke	1001310000	1114523023	6145000	#	$ 74.32	$ 148.16	$ 148.16	$ 148.16	$ 74.08			$ 592.88
469671	William R Parke	1001310000	1114523023	6146000	#	$ 34.99	$ 58.31	$ 58.31	$ 58.31	$ 29.16			$ 239.08
469671	William R Parke	1001310000	1114523023	6147000	#	$ 2.63	$ 4.31	$ 4.31	$ 4.31	$ 2.16			$ 17.72
469671	William R Parke	1001310000	1114523023	6148000	#	$ 268.12	$ 440.00	$ 440.00	$ 440.00	$ 220.00			$ 1,808.12
469671	William R Parke	1001310000	1114523023	6151000	#	$ 25.16	$ 41.93	$ 41.93	$ 41.93	$ 20.97			$ 171.92
469671	William R Parke	1001310000	1114523023	6164010	#								$ 0.00
	TOTAL 469671					$ 3,847.38	$ 3,395.36	$ 3,395.36	$ 3,395.37	$ 1,697.68	$ 0.00	$ 0.00	$ 15,731.15
475508	Curt E Heitzman	1001309000	1115823023	6111000	B77048000000	$ 601.68							$ 601.68
475508	Curt E Heitzman	1001309000	1115823023	6142000	B77048000000	$ 58.37							$ 58.37
475508	Curt E Heitzman	1001309000	1115823023	6143000	B77048000000	$ 64.67							$ 64.67
475508	Curt E Heitzman	1001309000	1115823023	6144000	B77048000000	$ 15.12							$ 15.12
475508	Curt E Heitzman	1001309000	1115823023	6145000	B77048000000	$ 42.07							$ 42.07
475508	Curt E Heitzman	1001309000	1115823023	6146000	B77048000000	$ 26.32							$ 26.32
475508	Curt E Heitzman	1001309000	1115823023	6147000	B77048000000	$ 1.26							$ 1.26
475508	Curt E Heitzman	1001309000	1115823023	6148000	B77048000000	$ 128.41							$ 128.41
475508	Curt E Heitzman	1001309000	1115823023	6151000	B77048000000	$ 18.93							$ 18.93
475508	Curt E Heitzman	1001309000	1115823023	6164010	B77048000000	$ 450.00							$ 450.00
475508	Curt E Heitzman	1001310000	1115823023	6111000	B77048000000	$ 1,251.36	$ 2,085.60	$ 2,085.60	$ 2,104.80	$ 2,104.80	$ 1,894.32	$ 2,104.80	$ 13,631.28
475508	Curt E Heitzman	1001310000	1115823023	6111060	B77048000000	$ 208.56					$ 210.48		$ 419.04
475508	Curt E Heitzman	1001310000	1115823023	6142000	B77048000000	$ 141.63	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,341.63
475508	Curt E Heitzman	1001310000	1115823023	6143000	B77048000000	$ 89.77	$ 127.36	$ 127.37	$ 128.54	$ 128.54	$ 128.54	$ 128.54	$ 858.66
475508	Curt E Heitzman	1001310000	1115823023	6144000	B77048000000	$ 21.00	$ 29.78	$ 29.79	$ 30.06	$ 30.06	$ 30.07	$ 30.06	$ 200.82
475508	Curt E Heitzman	1001310000	1115823023	6145000	B77048000000	$ 76.22	$ 132.64	$ 132.64	$ 133.87	$ 133.87	$ 133.87	$ 133.87	$ 876.98
475508	Curt E Heitzman	1001310000	1115823023	6146000	B77048000000	$ 36.55	$ 52.20	$ 52.20	$ 52.68	$ 52.68	$ 52.68	$ 52.68	$ 351.67
475508	Curt E Heitzman	1001310000	1115823023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 28.91
475508	Curt E Heitzman	1001310000	1115823023	6148000	B77048000000	$ 311.59	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,951.59
475508	Curt E Heitzman	1001310000	1115823023	6151000	B77048000000	$ 26.28	$ 37.54	$ 37.54	$ 37.89	$ 37.89	$ 37.89	$ 37.89	$ 252.[illegible]2
475508	Curt E Heitzman					$ 3,572.84	$ 3,109.43	$ 3,109.45	$ 3,132.15	$ 3,132.15	$ 3,132.16	$ 3,132.15	$ 22,32[illegible]3
	TOTAL 475508												$ 569.76
482161	John A Miller	1001309000	1116223023	6111000	B77048000000	$ 569.76							

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482161	John A Miller	1001309000	1116223023	6142000	B77048000000	$ 58.37							$ 58.37
482161	John A Miller	1001309000	1116223023	6143000	B77048000000	$ 62.20							$ 62.20
482161	John A Miller	1001309000	1116223023	6144000	B77048000000	$ 14.55							$ 14.55
482161	John A Miller	1001309000	1116223023	6145000	B77048000000	$ 40.56							$ 40.56
482161	John A Miller	1001309000	1116223023	6146000	B77048000000	$ 25.52							$ 25.52
482161	John A Miller	1001309000	1116223023	6147000	B77048000000	$ 1.26							$ 1.26
482161	John A Miller	1001309000	1116223023	6148000	B77048000000	$ 128.40							$ 128.40
482161	John A Miller	1001309000	1116223023	6151000	B77048000000	$ 18.35							$ 18.35
482161	John A Miller	1001309000	1116223023	6164010	B77048000000	$ 450.00							$ 450.00
482161	John A Miller	1001310000	1116223023	6111000	B77048000000	$ 1,185.12	$ 1,975.20	$ 1,975.20	$ 1,975.20	$ 987.60	$ 493.80		$ 8,592.12
482161	John A Miller	1001310000	1116223023	6111010	B77048000000					$ 197.52	$ 98.76		$ 296.28
482161	John A Miller	1001310000	1116223023	6111020	B77048000000					$ 790.08	$ 395.04		$ 1,185.12
482161	John A Miller	1001310000	1116223023	6111060	B77048000000	$ 197.52							$ 197.52
482161	John A Miller	1001310000	1116223023	6142000	B77048000000	$ 141.63	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 100.00		$ 1,041.63
482161	John A Miller	1001310000	1116223023	6143000	B77048000000	$ 84.32	$ 118.79	$ 118.79	$ 118.79	$ 118.79	$ 59.40		$ 618.88
482161	John A Miller	1001310000	1116223023	6144000	B77048000000	$ 19.72	$ 27.78	$ 27.79	$ 27.78	$ 27.78	$ 13.89		$ 144.74
482161	John A Miller	1001310000	1116223023	6145000	B77048000000	$ 71.46	$ 125.62	$ 125.62	$ 125.62	$ 125.62	$ 62.81		$ 636.75
482161	John A Miller	1001310000	1116223023	6146000	B77048000000	$ 34.61	$ 49.44	$ 49.44	$ 49.44	$ 49.44	$ 24.72		$ 257.09
482161	John A Miller	1001310000	1116223023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 2.16		$ 22.45
482161	John A Miller	1001310000	1116223023	6148000	B77048000000	$ 311.60	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 220.00		$ 2,291.60
482161	John A Miller	1001310000	1116223023	6151000	B77048000000	$ 24.89	$ 35.55	$ 35.55	$ 35.55	$ 35.55	$ 17.78		$ 184.87
482161	John A Miller	1001310000	1116223023	6151000	B77048000000	$ 24.89	$ 35.55	$ 35.55	$ 35.55	$ 35.55	$ 17.78	$ 0.00	$ 16,838.01
		TOTAL 482161				$ 3,442.89	$ 2,976.69	$ 2,976.70	$ 2,976.69	$ 2,976.69	$ 1,488.35		$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6111000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6111010	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6112000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6142000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6143000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6144000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6145000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6146000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6147000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6148000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6151000	#								$ 0.00
484002	Jack L Mottin Jr	1001309000	1116223023	6164010	#					$ 1,671.04	$ 2,387.20	$ 2,387.20	$ 6,445.44
484002	Jack L Mottin Jr	1001310000	1116223023	6111000	#								$ 0.00
484002	Jack L Mottin Jr	1001310000	1116223023	6111010	#								$ 0.00
484002	Jack L Mottin Jr	1001310000	1116223023	6111060	#								$ 0.00
484002	Jack L Mottin Jr	1001310000	1116223023	6111120	#								$ 0.00
484002	Jack L Mottin Jr	1001310000	1116223023	6112000	#					$ 94.00			$ 94.00
484002	Jack L Mottin Jr	1001310000	1116223023	6132000	#					$ 140.00	$ 200.00	$ 200.00	$ 540.00
484002	Jack L Mottin Jr	1001310000	1116223023	6142000	#					$ 106.32	$ 143.57	$ 143.56	$ 393.45
484002	Jack L Mottin Jr	1001310000	1116223023	6143000	#					$ 24.87	$ 33.57	$ 33.58	$ 92.02
484002	Jack L Mottin Jr	1001310000	1116223023	6144000	#					$ 112.26	$ 151.83	$ 151.83	$ 415.92
484002	Jack L Mottin Jr	1001310000	1116223023	6145000	#					$ 44.18	$ 59.75	$ 59.75	$ 163.68
484002	Jack L Mottin Jr	1001310000	1116223023	6146000	#					$ 3.02	$ 4.31	$ 4.31	$ 11.64
484002	Jack L Mottin Jr	1001310000	1116223023	6147000	#					$ 308.00	$ 440.00	$ 440.00	$ 1,188.00
484002	Jack L Mottin Jr	1001310000	1116223023	6148000	#					$ 31.77	$ 42.97	$ 42.97	$ 117.71
484002	Jack L Mottin Jr	1001310000	1116223023	6151000	#					$ 2,535.46	$ 3,463.20	$ 3,463.20	$ 9,461.86
		TOTAL 484002				$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 2,535.46	$ 3,463.20	$ 3,463.20	$ 0.00
484723	John R Chernavage	1001309000	1113723023	6111000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6111010	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6112000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6132000	#								

													$ 0.00
484723	John R Chernavage	1001309000	1113723023	6142000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6143000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6144000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6145000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6146000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6147000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6148000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6151000	#								$ 0.00
484723	John R Chernavage	1001309000	1113723023	6164010	#				$ 429.70	$ 2,864.64	$ 2,148.48	$ 2,387.20	$ 7,830.02
484723	John R Chernavage	1001310000	1113723023	6111000	#				$ 214.85	-$ 477.44			-$ 262.59
484723	John R Chernavage	1001310000	1113723023	6111010	#						$ 238.72		$ 238.72
484723	John R Chernavage	1001310000	1113723023	6111060	#				$ 14.89				$ 14.89
484723	John R Chernavage	1001310000	1113723023	6112000	#				$ 0.45				$ 0.45
484723	John R Chernavage	1001310000	1113723023	6131000	#				$ 15.17				$ 15.17
484723	John R Chernavage	1001310000	1113723023	6132000	#				$ 60.00	$ 200.00	$ 200.00	$ 200.00	$ 660.00
484723	John R Chernavage	1001310000	1113723023	6142000	#				$ 40.52	$ 143.57	$ 143.57	$ 143.56	$ 471.22
484723	John R Chernavage	1001310000	1113723023	6143000	#				$ 9.48	$ 33.57	$ 33.58	$ 33.57	$ 110.20
484723	John R Chernavage	1001310000	1113723023	6144000	#				$ 42.93	$ 151.83	$ 151.83	$ 151.83	$ 498.42
484723	John R Chernavage	1001310000	1113723023	6145000	#				$ 16.90	$ 59.75	$ 59.75	$ 59.75	$ 196.15
484723	John R Chernavage	1001310000	1113723023	6146000	#				$ 1.29	$ 4.31	$ 4.31	$ 4.31	$ 14.22
484723	John R Chernavage	1001310000	1113723023	6147000	#				$ 132.00	$ 440.00	$ 440.00	$ 440.00	$ 1,452.00
484723	John R Chernavage	1001310000	1113723023	6148000	#				$ 12.15	$ 42.97	$ 42.97	$ 42.97	$ 141.06
484723	John R Chernavage	1001310000	1113723023	6151000	#								
		TOTAL 484723				$ 0.00	$ 0.00	$ 0.00	$ 990.32	$ 3,463.20	$ 3,463.21	$ 3,463.19	$ 11,379.92
													$ 0.00
487989	Kevin T Quilter	1001309000	1110123061	6151000	#								$ 0.00
487989	Kevin T Quilter	1001309000	1111823023	6111000	#						$ 3.50		$ 3.50
487989	Kevin T Quilter	1001309000	1111823023	6112000	#						-$ 301.35		-$ 301.35
487989	Kevin T Quilter	1001309000	1111823023	6132000	#						$ 401.80		$ 401.80
487989	Kevin T Quilter	1001309000	1111823023	6133000	#								$ 0.00
487989	Kevin T Quilter	1001309000	1111823023	6142000	#						$ 9.46		$ 9.46
487989	Kevin T Quilter	1001309000	1111823023	6143000	#						$ 2.21		$ 2.21
487989	Kevin T Quilter	1001309000	1111823023	6144000	#						$ 5.47		$ 5.47
487989	Kevin T Quilter	1001309000	1111823023	6145000	#						$ 3.93		$ 3.93
487989	Kevin T Quilter	1001309000	1111823023	6146000	#								$ 0.00
487989	Kevin T Quilter	1001309000	1111823023	6147000	#								$ 0.00
487989	Kevin T Quilter	1001309000	1111823023	6148000	#					$ 29.47	$ 2.83		$ 32.30
487989	Kevin T Quilter	1001309000	1111823023	6151000	#								$ 0.00
487989	Kevin T Quilter	1001309000	1111823023	6164010	#					$ 1,671.04	$ 2,387.20	$ 2,387.20	$ 6,445.44
487989	Kevin T Quilter	1001310000	1111823023	6111000	#								$ 0.00
487989	Kevin T Quilter	1001310000	1111823023	6111010	#								$ 0.00
487989	Kevin T Quilter	1001310000	1111823023	6111060	#								$ 0.00
487989	Kevin T Quilter	1001310000	1111823023	6111070	#					$ 0.82			$ 0.82
487989	Kevin T Quilter	1001310000	1111823023	6112000	#					$ 24.44			$ 24.44
487989	Kevin T Quilter	1001310000	1111823023	6132000	#								$ 0.00
487989	Kevin T Quilter	1001310000	1111823023	6134000	#					$ 140.00	$ 200.00	$ 200.00	$ 540.00
487989	Kevin T Quilter	1001310000	1111823023	6142000	#					$ 102.06	$ 140.55	$ 143.57	$ 386.18
487989	Kevin T Quilter	1001310000	1111823023	6143000	#					$ 23.87	$ 32.87	$ 33.58	$ 90.32
487989	Kevin T Quilter	1001310000	1111823023	6144000	#					$ 107.88	$ 151.83	$ 151.83	$ 411.54
487989	Kevin T Quilter	1001310000	1111823023	6145000	#					$ 42.46	$ 58.42	$ 59.75	$ 160.63
487989	Kevin T Quilter	1001310000	1111823023	6146000	#					$ 3.02	$ 4.31	$ 4.31	$ 1[illegible]4
487989	Kevin T Quilter	1001310000	1111823023	6147000	#					$ 308.00	$ 440.00	$ 440.00	$ 1,188.00
487989	Kevin T Quilter	1001310000	1111823023	6148000	#					$ 1.06	$ 42.01	$ 42.97	$ 86.[illegible]4
487989	Kevin T Quilter	1001310000	1111823023	6151000	#								

		TOTAL 487989				$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 2,454.12	$ 3,585.04	$ 3,463.21	$ 9,502.37
489646	Larry D Sonnie	1001309000	1117323023	6111000	B77048000000	$ 508.80							$ 508.80
489646	Larry D Sonnie	1001309000	1117323023	6142000	B77048000000	$ 58.36							$ 58.36
489646	Larry D Sonnie	1001309000	1117323023	6143000	B77048000000	$ 58.50							$ 58.50
489646	Larry D Sonnie	1001309000	1117323023	6144000	B77048000000	$ 13.68							$ 13.68
489646	Larry D Sonnie	1001309000	1117323023	6145000	B77048000000	$ 37.62							$ 37.62
489646	Larry D Sonnie	1001309000	1117323023	6146000	B77048000000	$ 24.00							$ 24.00
489646	Larry D Sonnie	1001309000	1117323023	6147000	B77048000000	$ 1.26							$ 1.26
489646	Larry D Sonnie	1001309000	1117323023	6148000	B77048000000	$ 128.40							$ 128.40
489646	Larry D Sonnie	1001309000	1117323023	6151000	B77048000000	$ 17.26							$ 17.26
489646	Larry D Sonnie	1001309000	1117323023	6164010	B77048000000	$ 450.00							$ 450.00
489646	Larry D Sonnie	1001310000	1117323023	6111000	B77048000000	$ 1,058.40	$ 1,764.00	$ 1,764.00	$ 1,764.00	$ 1,764.00	$ 1,587.60	$ 1,764.00	$ 11,466.00
489646	Larry D Sonnie	1001310000	1117323023	6111060	B77048000000	$ 176.40					$ 176.40		$ 352.80
489646	Larry D Sonnie	1001310000	1117323023	6142000	B77048000000	$ 141.64	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,341.64
489646	Larry D Sonnie	1001310000	1117323023	6143000	B77048000000	$ 75.34	$ 106.09	$ 106.09	$ 106.08	$ 106.09	$ 106.09	$ 106.08	$ 711.86
489646	Larry D Sonnie	1001310000	1117323023	6144000	B77048000000	$ 17.62	$ 24.81	$ 24.81	$ 24.81	$ 24.81	$ 24.81	$ 24.81	$ 166.48
489646	Larry D Sonnie	1001310000	1117323023	6145000	B77048000000	$ 62.42	$ 112.19	$ 112.19	$ 112.19	$ 112.19	$ 112.19	$ 112.19	$ 735.56
489646	Larry D Sonnie	1001310000	1117323023	6146000	B77048000000	$ 30.91	$ 44.15	$ 44.15	$ 44.15	$ 44.15	$ 44.15	$ 44.15	$ 295.81
489646	Larry D Sonnie	1001310000	1117323023	6147000	B77048000000	$ 3.05	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 28.91
489646	Larry D Sonnie	1001310000	1117323023	6148000	B77048000000	$ 311.60	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,951.60
489646	Larry D Sonnie	1001310000	1117323023	6151000	B77048000000	$ 22.22	$ 31.75	$ 31.75	$ 31.75	$ 31.75	$ 31.75	$ 31.75	$ 212.72
489646	Larry D Sonnie	1001310000	1117323023	6151000	B77048000000	$ 22.22	$ 31.75	$ 31.75	$ 31.75	$ 31.75	$ 31.75	$ 31.75	$ 212.72
		TOTAL 489646				$ 3,197.48	$ 2,727.30	$ 2,727.30	$ 2,727.29	$ 2,727.30	$ 2,727.30	$ 2,727.29	$ 19,561.26
491457	Patricia A Hurd	1001309000	1111823023	6111000	B77048000000	$ 328.64							$ 328.64
491457	Patricia A Hurd	1001309000	1111823023	6112000	B77048000000	$ 16.00							$ 16.00
491457	Patricia A Hurd	1001309000	1111823023	6142000	B77048000000	$ 38.76							$ 38.76
491457	Patricia A Hurd	1001309000	1111823023	6143000	B77048000000	$ 48.89							$ 48.89
491457	Patricia A Hurd	1001309000	1111823023	6144000	B77048000000	$ 11.43							$ 11.43
491457	Patricia A Hurd	1001309000	1111823023	6145000	B77048000000	$ 23.48							$ 23.48
491457	Patricia A Hurd	1001309000	1111823023	6146000	B77048000000	$ 19.89							$ 19.89
491457	Patricia A Hurd	1001309000	1111823023	6147000	B77048000000	$ 0.84							$ 0.84
491457	Patricia A Hurd	1001309000	1111823023	6148000	B77048000000	$ 85.28							$ 85.28
491457	Patricia A Hurd	1001309000	1111823023	6151000	B77048000000	$ 14.31							$ 14.31
491457	Patricia A Hurd	1001309000	1111823023	6164010	B77048000000	$ 450.00							$ 450.00
491457	Patricia A Hurd	1001310000	1111823023	6111000	B77048000000	$ 1,367.04	$ 1,708.80	$ 1,708.80	$ 1,708.80	$ 341.76			$ 6,835.20
491457	Patricia A Hurd	1001310000	1111823023	6111010	B77048000000					$ 512.64			$ 512.64
491457	Patricia A Hurd	1001310000	1111823023	6112000	B77048000000	$ 64.00	$ 80.00	$ 80.00	$ 80.00	$ 16.00			$ 320.00
491457	Patricia A Hurd	1001310000	1111823023	6142000	B77048000000	$ 161.24	$ 200.00	$ 200.00	$ 200.00	$ 100.00			$ 861.24
491457	Patricia A Hurd	1001310000	1111823023	6143000	B77048000000	$ 88.05	$ 107.73	$ 107.73	$ 107.73	$ 52.38			$ 463.62
491457	Patricia A Hurd	1001310000	1111823023	6144000	B77048000000	$ 20.59	$ 25.20	$ 25.19	$ 25.20	$ 12.25			$ 108.43
491457	Patricia A Hurd	1001310000	1111823023	6145000	B77048000000	$ 58.11	$ 91.05	$ 91.05	$ 91.05	$ 44.31			$ 375.57
491457	Patricia A Hurd	1001310000	1111823023	6146000	B77048000000	$ 35.82	$ 44.77	$ 44.77	$ 44.77	$ 21.79			$ 191.92
491457	Patricia A Hurd	1001310000	1111823023	6147000	B77048000000	$ 3.47	$ 4.31	$ 4.31	$ 4.31	$ 2.16			$ 18.56
491457	Patricia A Hurd	1001310000	1111823023	6148000	B77048000000	$ 354.72	$ 440.00	$ 440.00	$ 440.00	$ 220.00			$ 1,894.72
491457	Patricia A Hurd	1001310000	1111823023	6151000	B77048000000	$ 25.75	$ 32.20	$ 32.20	$ 32.20	$ 15.67			$ 138.02
491457	Patricia A Hurd	1001310000	1116223023	6121000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6121010	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6122000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6132000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6142000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6143000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6144000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6145000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6146000	#								$ 0.00

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													$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6147000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6148000	#								$ 0.00
491457	Patricia A Hurd	1001310000	1116223023	6151000	#								$ 0.00
	TOTAL: 491457					$ 3,216.31	$ 2,734.06	$ 2,734.05	$ 2,734.06	$ 1,338.93	$ 0.00	$ 0.00	$ 12,757.41
510293	Mark J Truszkowski	1001309000	1112523023	6111000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6111010	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6111120	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6112000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6132000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6142000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6143000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6144000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6145000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6146000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6147000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6148000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6151000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001309000	1112523023	6164010	B77048000000				$ 2,066.40	$ 2,066.40	$ 1,859.76	$ 2,066.40	$ 8,058.96
510293	Mark J Truszkowski	1001310000	1112523023	6111000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001310000	1112523023	6111010	B77048000000						$ 206.64		$ 206.64
510293	Mark J Truszkowski	1001310000	1112523023	6111060	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001310000	1112523023	6111120	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001310000	1112523023	6112000	B77048000000								$ 0.00
510293	Mark J Truszkowski	1001310000	1112523023	6132000	B77048000000				$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 800.00
510293	Mark J Truszkowski	1001310000	1112523023	6142000	B77048000000				$ 124.27	$ 124.28	$ 124.27	$ 124.27	$ 497.09
510293	Mark J Truszkowski	1001310000	1112523023	6143000	B77048000000				$ 29.07	$ 29.06	$ 29.06	$ 29.07	$ 116.26
510293	Mark J Truszkowski	1001310000	1112523023	6144000	B77048000000				$ 131.42	$ 131.42	$ 131.42	$ 131.42	$ 525.68
510293	Mark J Truszkowski	1001310000	1112523023	6145000	B77048000000				$ 51.72	$ 51.72	$ 51.72	$ 51.72	$ 206.88
510293	Mark J Truszkowski	1001310000	1112523023	6146000	B77048000000				$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 17.24
510293	Mark J Truszkowski	1001310000	1112523023	6147000	B77048000000				$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 1,760.00
510293	Mark J Truszkowski	1001310000	1112523023	6148000	B77048000000				$ 37.20	$ 37.20	$ 37.20	$ 37.20	$ 148.80
510293	Mark J Truszkowski	1001310000	1112523023	6151000	B77048000000								
	TOTAL: 510293					$ 0.00	$ 0.00	$ 0.00	$ 3,084.39	$ 3,084.39	$ 3,084.38	$ 3,084.39	$ 12,337.55
532309	Matthew J Dillon	1001309000	1118223023	6111000	B77048000000	$ 342.40							$ 342.40
532309	Matthew J Dillon	1001309000	1118223023	6112000	B77048000000	$ 16.00							$ 16.00
532309	Matthew J Dillon	1001309000	1118223023	6142000	B77048000000	$ 38.75							$ 38.75
532309	Matthew J Dillon	1001309000	1118223023	6143000	B77048000000	$ 49.35							$ 49.35
532309	Matthew J Dillon	1001309000	1118223023	6144000	B77048000000	$ 11.55							$ 11.55
532309	Matthew J Dillon	1001309000	1118223023	6145000	B77048000000	$ 29.87							$ 29.87
532309	Matthew J Dillon	1001309000	1118223023	6146000	B77048000000	$ 20.23							$ 20.23
532309	Matthew J Dillon	1001309000	1118223023	6147000	B77048000000	$ 0.84							$ 0.84
532309	Matthew J Dillon	1001309000	1118223023	6148000	B77048000000	$ 85.26							$ 85.26
532309	Matthew J Dillon	1001309000	1118223023	6151000	B77048000000	$ 14.55							$ 14.55
532309	Matthew J Dillon	1001309000	1118223023	6164010	B77048000000	$ 450.00							$ 450.00
532309	Matthew J Dillon	1001310000	1118223023	6111000	B77048000000	$ 1,424.64	$ 1,602.72	$ 1,780.80	$ 1,872.00	$ 1,684.80	$ 1,872.00	$ 1,872.00	$ 12,108.96
532309	Matthew J Dillon	1001310000	1118223023	6111060	B77048000000		$ 178.08			$ 187.20			$ 365.28
532309	Matthew J Dillon	1001310000	1118223023	6112000	B77048000000	$ 64.00	$ 72.00	$ 80.00	$ 80.00	$ 72.00	$ 80.00	$ 80.00	$ 528.00
532309	Matthew J Dillon	1001310000	1118223023	6142000	B77048000000	$ 161.25	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 200.00	$ 1,361.25
532309	Matthew J Dillon	1001310000	1118223023	6143000	B77048000000	$ 90.88	$ 111.56	$ 112.06	$ 117.54	$ 117.05	$ 117.54	$ 117.54	$ 784.17
532309	Matthew J Dillon	1001310000	1118223023	6144000	B77048000000	$ 21.25	$ 26.09	$ 26.21	$ 27.49	$ 27.37	$ 27.49	$ 27.49	$ 183.30
532309	Matthew J Dillon	1001310000	1118223023	6145000	B77048000000	$ 76.13	$ 117.84	$ 118.35	$ 124.15	$ 123.64	$ 124.15	$ 124.15	$ 808.[illegible]
532309	Matthew J Dillon	1001310000	1118223023	6146000	B77048000000	$ 37.26	$ 46.38	$ 46.58	$ 48.86	$ 48.66	$ 48.86	$ 48.86	$ 325.[illegible]
532309	Matthew J Dillon	1001310000	1118223023	6147000	B77048000000	$ 3.47	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 4.31	$ 29.[illegible]

532309	Matthew J Dillon	1001310000	1118223023	6148000	B77048000000	$ 354.74	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 440.00	$ 2,994.74
532309	Matthew J Dillon	1001310000	1118223023	6151000	B77048000000	$ 26.80	$ 33.35	$ 33.49	$ 35.14	$ 34.99	$ 35.14	$ 35.14	$ 234.05
TOTAL 532309						$ 3,319.22	$ 2,832.33	$ 2,841.80	$ 2,949.49	$ 2,940.02	$ 2,949.49	$ 2,949.49	$ 20,781.84
TOTAL PAYMENT AMOUNT													$ 432,459.27

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**** 100 PAYROLL										Direct Deposit # 21367	
Black, Steven D	1 X Salaries			1,169.60		Social Security	72.52			Check Amt	0.00
22						Medicare	16.96			Chkg 6263	800.44
						Fed Income Tax	222.12				
						PA Income Tax	35.91				
						PA Unemploy	0.94				
						PA HRSBG-Dau	18.71				
						PA LST52 DIS L	2.00				
	EMPLOYEE TOTAL			1,169.60			369.16			Net Pay	800.44
Blackwell, Lawrence H	1 X Salaries			361.20		Social Security	25.89			Direct Deposit # 21368	
649	1 X Salaries			56.40		Medicare	6.06			Check Amt	0.00
						PA Income Tax	12.82			Chkg 3544	368.32
						PA Unemploy	0.33				
						PA HRSBG-Dau	4.18				
	EMPLOYEE TOTAL			417.60			49.28			Net Pay	368.32
Bowers, Rachel E	1 X Salaries			1,280.80		Social Security	79.41			Direct Deposit # 21369	
1654						Medicare	18.57			Check Amt	0.00
						Fed Income Tax	71.06			Chkg 2679	1,056.61
						PA Income Tax	39.32				
						PA Unemploy	1.02				
						PA HRSBG-Dau	12.81				
						PA LST52 DIS L	2.00				
	EMPLOYEE TOTAL			1,280.80			224.19			Net Pay	1,056.61
Brezler, Samuel T	1 X Salaries			3,481.65		Social Security	258.79	Union Dues	51.73	Direct Deposit # 21370	
1	1 X Salaries			692.31		Medicare	60.52			Check Amt	0.00
						Fed Income Tax	1,013.28			Chkg 1869	1,050.00
						PA Income Tax	128.14			Savg 1275	1,541.46
						PA Unemploy	3.34				
						PA HRSBG-Dau	64.70				
						PA LST52 DIS L	2.00				
	EMPLOYEE TOTAL			4,173.96			1,530.77		51.73	Net Pay	2,591.46
Corish, Sonya K	1 X Salaries			1,371.20		Social Security	85.01	Garn	108.72	Direct Deposit # 21371	
1453						Medicare	19.88			Check Amt	0.00
						Fed Income Tax	120.25			Chkg 5327	878.43
						PA Income Tax	42.10			Savg 6545	100.00
						PA Unemploy	1.10				
						PA HRSBG-Dau	13.71				
						PA LST52 DIS L	2.00				
	EMPLOYEE TOTAL			1,371.20			284.05		108.72	Net Pay	97[illegible].43
Dillon, Matthew J	1 X Salaries			666.80		Social Security	41.34			Direct Deposit # 21372	

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**** 100 PAYROLL (cont.) 1304						Medicare	9.67			Check Amt	0.00
						Fed Income Tax	56.70			Chkg 3543	531.42
						PA Income Tax	20.47				
						PA Unemploy	0.53				
						PA HRSBG-Dau	6.67				
	EMPLOYEE TOTAL			666.80			135.38			Net Pay	531.42
Dyches III, Lee J 8	1 X Salaries			1,049.25		Social Security	92.91			Direct Deposit # 21373	
	1 X Salaries			449.31		Medicare	21.73			Check Amt	0.00
						Fed Income Tax	103.73			Chkg 3936	1,217.99
						PA Income Tax	46.01				
						PA Unemploy	1.20				
						PA HRSBG-Dau	14.99				
	EMPLOYEE TOTAL			1,498.56			280.57			Net Pay	1,217.99
Evans, Anna M 1022	1 X Salaries			1,626.40		Social Security	100.84			Direct Deposit # 21374	
						Medicare	23.58			Check Amt	0.00
						Fed Income Tax	224.63			Chkg 4897	1,198.10
						PA Income Tax	49.93				
						PA Unemploy	1.30				
						PA HRSBG-Dau	26.02				
						PA LST52 DIS L	2.00				
	EMPLOYEE TOTAL			1,626.40			428.30			Net Pay	1,198.10
Friederich, Michael E 12	1 X Salaries			1,177.88		Social Security	73.03			Direct Deposit # 21375	
						Medicare	17.08			Check Amt	0.00
						Fed Income Tax	112.31			Chkg 9209	926.58
						PA Income Tax	36.16				
						PA Unemploy	0.94				
						PA HRSBG-Dau	11.78				
	EMPLOYEE TOTAL			1,177.88			251.30			Net Pay	926.58
Heitzman Jr, Curt E 117	1 X Salaries			803.77		Social Security	49.83	Dom Rel	379.29	Direct Deposit # 21376	
						Medicare	11.65			Check Amt	0.00
						Fed Income Tax	56.19			Chkg 7886	267.42
						PA Income Tax	24.68				
						PA Unemploy	0.64				
						PA HRSBG-Dau	14.07				
	EMPLOYEE TOTAL			803.77			157.06		379.29	Net Pay	267.42
Hood, Shawn P 78	1 X Salaries			676.92		Social Security	41.97			Direct Deposit # 21377	
						Medicare	9.82			Check Amt	0.00
						Fed Income Tax	14.81			Chkg 7377	582.23
						PA Income Tax	20.78				
						PA Unemploy	0.54				

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**** 100 PAYROLL (cont.)						PA HRSBG-Dau	6.77			
	EMPLOYEE TOTAL			676.92			94.69		Net Pay	582.23
Hurd, Patricia A	1 X Salaries			1,436.45		Social Security	91.03		Direct Deposit # 21378	
14	1 X Salaries			31.71		Medicare	21.29		Check Amt	0.00
						Fed Income Tax	113.73		Savg 0546	1,181.19
						PA Income Tax	45.07			
						PA Unemploy	1.17			
						PA HRSBG-Dau	14.68			
	EMPLOYEE TOTAL			1,468.16			286.97		Net Pay	1,181.19
Klett III, John S	1 X Salaries			1,177.88		Social Security	73.03		Direct Deposit # 21379	
15						Medicare	17.08		Check Amt	0.00
						Fed Income Tax	76.68		Chkg 2998	962.21
						PA Income Tax	36.16			
						PA Unemploy	0.94			
						PA HRSBG-Dau	11.78			
	EMPLOYEE TOTAL			1,177.88			215.67		Net Pay	962.21
Lapp, Paula D	1 X Salaries			1,081.60		Social Security	67.06		Direct Deposit # 21380	
1725						Medicare	15.68		Check Amt	0.00
						Fed Income Tax	62.24		Chkg 2349	883.23
						PA Income Tax	33.21			
						PA Unemploy	0.87			
						PA HRSBG-Dau	17.31			
						PA LST52 DIS L	2.00			
	EMPLOYEE TOTAL			1,081.60			198.37		Net Pay	883.23
Mc Connell, Edward R	1 X Salaries			1,308.31		Social Security	124.04		Direct Deposit # 21381	
2	1 X Salaries			692.31		Medicare	29.01		Check Amt	0.00
						Fed Income Tax	465.00		Chkg 8510	1,287.54
						PA Income Tax	61.42			
						PA Unemploy	1.60			
						PA HRSBG-Dau	30.01			
						PA LST52 DIS L	2.00			
	EMPLOYEE TOTAL			2,000.62			713.08		Net Pay	1,287.54
Mc Nany, Donald G	1 X Salaries			490.53		Social Security	30.41		Direct Deposit # 21382	
4						Medicare	7.11		Check Amt	0.00
						Fed Income Tax	370.00		Chkg 4077	62.65
						PA Income Tax	15.06			
						PA Unemploy	0.39			
						PA HRSBG-Dau	4.91			
	EMPLOYEE TOTAL			490.53			427.88		Net Pay	62.65

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**** 100 PAYROLL (cont.)										
Miller, John A	1 X Salaries			885:37		Social Security	54:89		Direct Deposit # 21383	
81						Medicare	12:84		Check Amt	0:00
						Fed Income Tax	7:58		Chkg 6462	773:32
						PA Income Tax	27:18			
						PA Unemploy	0:71			
						PA HRSBG-Dau	8:85			
	EMPLOYEE TOTAL			885:37			112:05		Net Pay	773:32
Ortlip, Gene S	1 X Salaries			2,452:80		Social Security	152:07		Direct Deposit # 21384	
5						Medicare	35:57		Check Amt	0:00
						Fed Income Tax	431:23		Chkg 5360	1,711:75
						PA Income Tax	75:30			
						PA Unemploy	1:96			
						PA HRSBG-Dau	42:92			
						PA LST52 DIS L	2:00			
	EMPLOYEE TOTAL			2,452:80			741:05		Net Pay	1,711:75
Parke, William R	1 X Salaries			908:52		Social Security	56:33		Direct Deposit # 21385	
32						Medicare	13:17		Check Amt	0:00
						PA Income Tax	27:89		Chkg 7637	795:86
						PA Unemploy	0:73			
						PA HRSBG-Dau	14:54			
	EMPLOYEE TOTAL			908:52			112:66		Net Pay	795:86
Pinto, Roy C	1 X Salaries			1,581:79		Social Security	140:99		Direct Deposit # 21386	
3	1 X Salaries			692:31		Medicare	32:97		Check Amt	0:00
						Fed Income Tax	258:00		Chkg 9411	1,747:77
						PA Income Tax	69:81			
						PA Unemploy	1:82			
						PA HRSBG-Dau	22:74			
	EMPLOYEE TOTAL			2,274:10			526:33		Net Pay	1,747:77
Poindexter, Percy	1 X Salaries			1,346:29		Social Security	126:39		Direct Deposit # 21387	
17	1 X Salaries			692:31		Medicare	29:56		Check Amt	0:00
						Fed Income Tax	327:68		Chkg 3440	1,449:98
						PA Income Tax	62:59			
						PA Unemploy	1:63			
						PA HRSBG-Dau	40:77			
	EMPLOYEE TOTAL			2,038:60			588:62		Net Pay	1,449:98
Smith, Robert A	1 X Salaries			374:13		Social Security	26:80		Direct Deposit # 21388	
216	1 X Salaries			58:17		Medicare	6:27		Check Amt	0:00
						PA Income Tax	13:27		Chkg 6722	381:2[illegible]
						PA Unemploy	0:35			
						PA HRSBG-Dau	4:32			

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**** 100 PAYROLL									Direct Deposit # 21531	
Dyches III, Lee J	1 X Salaries			524.63		Social Security	32.53		Check Amt	0.00
8						Medicare	7.61		Chkg 3936	462.71
						PA Income Tax	16.11			
						PA Unemploy	0.42			
						PA HRSBG-Dau	5.25			
							61.92		Net Pay	462.71
	EMPLOYEE TOTAL			524.63						
Hood, Shawn P	1 X Salaries			338.46		Social Security	20.98		Direct Deposit # 21532	
78						Medicare	4.91		Check Amt	0.00
						PA Income Tax	10.39		Chkg 7377	298.53
						PA Unemploy	0.27			
						PA HRSBG-Dau	3.38			
							39.93		Net Pay	298.53
	EMPLOYEE TOTAL			338.46						
Hurd, Patricia A	1 X Salaries			718.23		Social Security	44.53		Direct Deposit # 21533	
14						Medicare	10.41		Check Amt	0.00
						Fed Income Tax	6.44		Savg 0546	627.05
						PA Income Tax	22.05			
						PA Unemploy	0.57			
						PA HRSBG-Dau	7.18			
							91.18		Net Pay	627.05
	EMPLOYEE TOTAL			718.23						
Miller, John A	1 X Salaries			442.69		Social Security	27.45		Direct Deposit # 21534	
81						Medicare	6.42		Check Amt	0.00
						PA Income Tax	13.59		Chkg 6462	390.45
						PA Unemploy	0.35			
						PA HRSBG-Dau	4.43			
							52.24		Net Pay	390.45
	EMPLOYEE TOTAL			442.69						
COMPANY TOTALS										
4 Person(s)	1 X Salaries			2,024.01		Social Security	125.49		Check Amt	0.00
4 Transaction(s)						Medicare	29.35		Dir Dep	1,778.74
						Fed Income Tax	6.44			
						PA Income Tax	62.14			
						PA Unemploy	1.61			
						PA HRSBG-Dau	20.24			
							245.27		Net Pay	1,778.74
	COMPANY TOTAL			2,024.01						
						Employer Liabilities				
						Social Security	125.49			
						Medicare	29.35			

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PAYROLL JOURNAL

0028 0028-6919 Pennsylvania State Correctiona

EMPLOYEE NAME / ID	HOURS, EARNINGS, REIMBURSEMENTS & OTHER PAYMENTS: DESCRIPTION	RATE	HOURS	EARNINGS	REIMB & OTHER PAYMENTS	WITHHOLDINGS		DEDUCTIONS	NET PAY ALLOCATIONS	
**** 100 PAYROLL (cont.)						PA HRSBG-Dau	46.15			
	EMPLOYEE TOTAL			4,615.38			1,572.88		Net Pay	3,042.50
Ortlip, Gene S	1 X Salaries			2,452.80		Social Security	152.07		Direct Deposit # 21477	
5						Medicare	35.57		Check Amt	0.00
						Fed Income Tax	431.23		Chkg 5360	1,711.75
						PA Income Tax	75.30			
						PA Unemploy	1.96			
						PA HRSBG-Dau	42.92			
						PA LST52 DIS L	2.00			
	EMPLOYEE TOTAL			2,452.80			741.05		Net Pay	1,711.75
Parke, William R	1 X Salaries			454.26		Social Security	28.16		Direct Deposit # 21478	
32						Medicare	6.59		Check Amt	0.00
						PA Income Tax	13.95		Chkg 7637	397.93
						PA Unemploy	0.36			
						PA HRSBG-Dau	7.27			
	EMPLOYEE TOTAL			454.26			56.33		Net Pay	397.93
Pinto, Roy C	1 X Salaries			1,581.79		Social Security	140.99		Direct Deposit # 21479	
3	1 X Salaries			692.31		Medicare	32.97		Check Amt	0.00
						Fed Income Tax	258.00		Chkg 9411	1,747.77
						PA Income Tax	69.81			
						PA Unemploy	1.82			
						PA HRSBG-Dau	22.74			
	EMPLOYEE TOTAL			2,274.10			526.33		Net Pay	1,747.77
Smith, Robert A	1 X Salaries			374.13		Social Security	23.20		Direct Deposit # 21480	
216						Medicare	5.42		Check Amt	0.00
						PA Income Tax	11.49		Chkg 6722	329.98
						PA Unemploy	0.30			
						PA HRSBG-Dau	3.74			
	EMPLOYEE TOTAL			374.13			44.15		Net Pay	329.98
Smith, Shawn J	1 X Salaries			3,129.76		Social Security	194.05		Direct Deposit # 21481	
20						Medicare	45.38		Check Amt	0.00
						Fed Income Tax	610.99		Chkg 1730	2,132.25
						PA Income Tax	96.08			
						PA Unemploy	2.50			
						PA HRSBG-Dau	48.51			
	EMPLOYEE TOTAL			3,129.76			997.51		Net Pay	2,132.25
Sonnie Jr, Larry D	1 X Salaries			1,381.25		Social Security	85.64		Direct Deposit # 21482	
9						Medicare	20.03		Check Amt	0.00
						Fed Income Tax	107.19		Chkg 1782	1,104.46

DRAFT

DEC 2 2 2010

PA STATE CORRECTIONS OFFICERS ASSOCIATION

FORENSIC INVESTIGATION

FINDINGS

Expert Report of

Bruce J. Brown, CPA/ABV, CFF, CVA

Roy Pinto, President
PA State Corrections Officers Association
2421 N. Front Street
Harrisburg, PA 17110-1110

Dear Mr. Pinto:

I. Introduction

The opinions expressed in this report are based on the information described herein. Amendments or additions to this report and the attached schedules (Exhibits A to Q) may be required as a result of additional information that may come to our attention as a result of, including, but not limited to, the discovery of new evidence, the further review of documents, the testimony of fact witnesses in depositions, expert discovery and the testimony of other witnesses.

II. Assignment

We have been retained by your organization to render an expert opinion with respect to the economic damages incurred by PA State Corrections Officers Association (PSCOA) as a result of certain employees submitting and being paid invalid and unsubstantiated mileage reimbursement requests. Additionally, we were requested to review and provide an opinion on a retroactive pay raise provided to one business agent, Shawn Hood.

III. Summary of Expert Qualifications

Bruce J. Brown, a certified public accountant licensed in the Commonwealth of Pennsylvania managed the investigation. Mr. Brown has the ABV (accredited in business valuations) and CFF (certified in financial forensics) credentials issued by the American Institute of Certified Public Accountants. He is also a Certified Valuation Analyst, licensed by the National Association of Certified Valuation Analysts, and a Principal of the accounting firm of Brown Schultz Sheridan & Fritz. His work in the accounting profession includes experience as an auditor and a consultant. His expert qualifications are described in Exhibit A hereto.

Brown has been performing work as an auditor and consultant to commercial entities and not-for-profit organizations since 1972. He has been performing services in litigation support matters since 1989.

Brown has been compensated for this matter at his standard hourly rate, which is currently $225 per hour.

Assisting Brown in the examination was Richard Bluis, a partner with the CPA firm, Martin M. Sacks & Associates, and several employees of Brown Schultz Sheridan & Fritz. Their billing rates ranged from $80 to $165 per hour.

IV. Summary of Opinions

Based upon our analysis, we have concluded PSCOA provided reimbursements of $370,892 for mileage that cannot be substantiated. See Exhibit C, which summarizes the amount by individual. Additional Exhibits have been provided to demonstrate the calculations of the excess mileage by individual and which indicate the mileage each individual was entitled to based upon the supporting documentation that was examined. These Exhibits are discussed in Section VII. We also have concluded Shawn Hood was provided a retroactive pay raise of $76,356.66 that was inappropriate. This is discussed in Section VIII.

V. Evidence Considered

In undertaking this assignment, we have considered information from various sources, each of which is of a type that is reasonably relied upon by an expert in this field. Those sources are identified in Exhibit B to this report. We have also relied upon Mr. Brown's professional judgment and expertise gathered during his 38 years in public accounting Mr. Brown's opinions rendered in this report are within a reasonable degree of certainty within his field of expertise as an accountant.

VI. Discussion of Opinion

A. Background

1. PSCOA was organized in June 21, 2001 and is recognized as the exclusive representative for collective bargaining purposes for corrections officers employed by the Commonwealth of Pennsylvania.

2. PSCOA employs individuals who serve as its officers, business agents and administrative personnel.

3. PSCOA has an executive board, which oversees the activities of its officers.

4. On January 29, 2004, the executive board of PSCOA issued a policy requiring all officers to work in its Harrisburg office and the policy specifically stated no officers were to be reimbursed mileage for their travel to Harrisburg. (Exhibit N)

5. On September 12, 2005, PSCOA's executive board issued a policy that effective January 1, 2006, all officers were to receive a stipend for as long as they were in office. That stipend is $18,000 per year and its purpose is to cover travel to/from their homes to the Harrisburg office of PSCOA and to cover meals and lodging while in Harrisburg. (Exhibit O)

6. Business agents were provided reimbursement for use of their own vehicles while on PSCOA business. The rate paid was based upon the rate established by the Internal Revenue Service.

7. On July 19, 2010, an agreement was entered into between PSCOA and the Business Agents Representing State Union Employees Association (BARSUEA). This agreement recognized BARSUEA as the sole and exclusive bargaining agent for business agents employed by PSCOA.

8. The new officers of PSCOA, who were installed in 2010, reviewed the financial records of PSCOA and noted that reimbursements for mileage appeared excessive. PSCOA operates on a fiscal year from July 1 to June 30. PSCOA had provided reimbursements of $345,438, $371,071 and $437,542 for the years ended June 30, 2008, 2009 and 2010, respectively. Based upon the Internal Revenue Service rates in effect for those years, PSCOA provided reimbursements for over two million miles.

B. Methodology

We obtained the mileage section of PSCOA's general ledger for the fiscal years that ended June 30, 2008, 2009 and 2010. This information indicated, by individual business agent, the amount of reimbursement provided. Utilizing a scope of $15,000 or greater for a year (reimbursement of mileage totaling $15,000 or greater to an individual business agent), we identified various business agents whose expense reports were to be considered for examination. After reviewing the reports for those meeting our scope, we met with Roy Pinto, PSCOA's president, and John Chernavage, PSCOA's secretary/treasurer, to ascertain the individual business agents with which they had concerns. Based upon these preliminary procedures, we selected Lee Dyches, Michael Friederich, Shawn Hood, Patricia Hurd, John Klett, John Miller and Mark Watson for a more in-depth examination. Upon completion of our analysis of these individuals, we extended our examination to include Edward McConnell, Donald McNany, Samuel Brezler and Percy Poindexter who were officers of PSCOA.

1. Our first step was to obtain the time sheets/expense reports for all individuals noted. These reports denote mileage reimbursements being claimed. From these reports, we prepared a spreadsheet for each individual of the mileage reimbursement claimed during the years ended June 30, 2008, 2009 and 2010.

2. While scheduling out the mileage being claimed, we noted none of the Business Agents' reports, with the exception of Patricia Hurd, indicated where the travel occurred for which the mileage was being claimed. In other words, there was no notation as to the starting point, ending point or the purpose of the trip. The time sheets were equally as vague. There was generally no notation on the time sheet that identified what specifically the business agent did that day, and there was no notation as to where the agent performed his/her work that day. Consequently, no inference could be made as to why the mileage was being claimed. Accordingly, we concluded other documentation was necessary in order to validate the person's travel.

3. We obtained the following information for the individuals noted above:
   a) Credit card statements from Commerce Bank and M&T Bank for each month in the period July 1, 2007 through June 30, 2010.
   b) Supporting data for the credit card charges (invoices, credit card slips, etc.) for the same period.
   c) Personal expense reports including supporting data for expense entries.

d) EZ Pass reports for the transponder assigned to the applicable individuals for 2007, 2008, 2009 and 2010, which denotes trips made by the individuals.
e) A list of Grievance Committee meeting dates that were scheduled in 2007 through 2010. This identified meetings that the business agents were expected to attend. However, these did not provide evidence that the meetings were, in fact, attended.
f) Minutes for labor management meetings and union meetings for 2007-2010. These minutes indicated which business agents attended specific meetings.
g) A listing of hotel rooms reserved and paid for by PSCOA during 2007-2010. Using hotel invoices, PSCOA personnel prepared a listing of hotel rooms that were paid for by PSCOA for the individuals in our examination.
h) Facility check-in and checkout details for the Commonwealth of Pennsylvania's correctional facilities for the individuals in our examination.

4. Using the information noted in #1 and #3 above, we reconstructed where the individuals were on each day, noting the location where meals or other charges were incurred.

5. Based upon locations noted from the data examined, our next step was to calculate the mileage an individual was entitled to claim. Using MapQuest (www.mapquest.com), we calculated the mileage from an individual's home (or another location if one was determined) to the appropriate location. This calculation was inserted onto the worksheet noted in #1. If, based upon all the evidence we reviewed, there was no evidence of travel having occurred on a particular day, this was noted on the worksheet.

6. Our next step was to determine, by fiscal year, the total mileage each individual was entitled to claim. A calculation was then made of the amount of reimbursement an individual was entitled to based upon the rate established by the Internal Revenue Service for each year. .

VII. Findings

A. Lee J. Dyches - Exhibits D-1 and D-2

Based upon our analysis, Lee J. Dyches submitted claims for reimbursement of 189,383 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $102,079. We determined Dyches was entitled to reimbursement for 39,589 miles or $20,712. The excess reimbursement he claimed was $79,860.

B. Michael Friederich

Based upon our analysis, Michael Friederich submitted claims for reimbursement of 104,612 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $55,909. For each day that Friederich submitted a reimbursement request, we were able to determine a specific location that he had traveled. The mileage he claimed was comparable to the amount we determined using MapQuest. Accordingly, we have concluded the reimbursements Friederich received were legitimate and no Exhibit is provided.

C. Shawn P. Hood - Exhibits E-1 and E-2

Based upon our analysis, Shawn P. Hood submitted claims for reimbursement of 193,150 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $102,184. We determined Mr. Hood was entitled to reimbursement for 56,611 miles or $30,345. The excess reimbursement he claimed was $71,623.

Attached as Exhibit P is a document that demonstrates the type of abuse we noted by Mr. Hood. This Exhibit represents an invoice and an opinion and award in an arbitration matter. The invoice indicates that on May 17, 2010 an attorney from Jennings Sigmond, P.C. met with Mr. Hood to prepare for an arbitration matter. The opinion and award clearly states Hood testified at the hearing on May 18, 2010. The meeting and hearing were in SCI-Fayette, which MapQuest indicates is 102 miles (round trip) from Hood's home. Hood charged PSCOA 828 miles travel for these two days, indicating he requested an excess reimbursement of 624 miles.

D. Patricia A. Hurd - Exhibits F-1 and F-2

Based upon our analysis, Patricia A. Hurd submitted claims for reimbursement of 102,038 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $53,792. We determined Ms. Hurd was entitled to reimbursement for 83,780 miles or $44,342. The excess reimbursement she claimed was $9,450. Although as noted above, Ms. Hurd was the only agent who indicated on her time sheet the location to which she traveled. We were unable to validate all the locations she claimed she visited, and so, we concluded the claims were invalid.

E. John S. Klett - Exhibits G-1 and G-2

Based upon our analysis, John S. Klett submitted claims for reimbursement of 126,526 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $66,900. We determined Mr. Klett was entitled to reimbursement for 54,537 miles or $28,747. The excess reimbursement he claimed was $38,151.

F. John A. Miller - Exhibits H-1 and H-2

Based upon our analysis, John A. Miller submitted claims for reimbursement of 163,855 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $89,929. We determined Mr. Miller was entitled to reimbursement for 69,759 miles or $36,919. The excess reimbursement he claimed was $49,888.

G. Mark A. Watson - Exhibits I-1 and I-2

Based upon our analysis, Mark A. Watson submitted claims for reimbursement of 110,040 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $57,860. We determined Mr. Watson was entitled to reimbursement for 30,235 miles or $16,023. The excess reimbursement he claimed was $41,837.

H. Edward R. McConnell - Exhibits J-1 and J-2

Edward R. McConnell was an officer of PSCOA. Accordingly, his mileage reimbursement should have been limited to trips he made other than to travel to Harrisburg, which was considered his home office in accordance with the executive board policy of January 29, 2004 (see Exhibit N).

Based upon our analysis, Mr. McConnell submitted claims for reimbursement of 115,518 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $61,755. We determined Mr. McConnell was entitled to reimbursement for 26,960 miles or $14,091. The excess reimbursement he claimed was $47,600.

I. Donald McNany - Exhibits K-1 and K-2

Donald McNany was an officer of PSCOA. Accordingly, his mileage reimbursement should have been limited to trips he made other than to travel to Harrisburg, which was considered his home office in accordance with the executive board policy of January 29, 2004 (see Exhibit N).

Based upon our analysis, Mr. McNany submitted claims for reimbursement of 26,298 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $13,866. We determined Mr. McNany was entitled to reimbursement for 4,488 miles or $2,322. The excess reimbursement he claimed was $11,544.

We noted many of the reimbursements requested by Mr. McNany were on Mondays and Fridays (days he traveled to/from his home and the Harrisburg office). Many of the time sheets indicated he stopped at a location on route, attempting to justify a mileage deduction from his home. This mileage was not deemed legitimate.

J. Samuel Brezler - Exhibits L-1 and L-2

Samuel Brezler was an officer of PSCOA. Accordingly, his mileage reimbursement should have been limited to trips he made other than to travel to Harrisburg, which was considered his home office in accordance with the executive board policy of January 29, 2004 (see Exhibit N).

Based upon our analysis, Mr. Brezler submitted claims for reimbursement of 17,989 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $9,335. We determined Mr. Brezler was entitled to reimbursement for 6,216 miles or $3,214. The excess reimbursement he claimed was $6,069.

K. Percy Poindexter - Exhibits M-1 and M-2

Percy Poindexter was an officer of PSCOA. Accordingly, his mileage reimbursement should have been limited to trips he made other than to travel to Harrisburg, which was considered his home office in accordance with the executive board policy of January 29, 2004 (see Exhibit N).

Based upon our analysis, Mr. Poindexter submitted claims for reimbursement of 50,094 miles during the period July 1, 2007 through June 30, 2010 and was reimbursed $26,401. We determined Mr. Poindexter was entitled to reimbursement for 21,268 miles or $11,213. The excess reimbursement he claimed was $14,870.

VIII. Shawn Hood – retroactive pay increase

During the pay period that ended June 26, 2010, Shawn Hood was given a retroactive pay increase of $76,356.66 that covered the period from his hiring as a business agent in 2003 through June 30, 2010. Our review of PSCOA's payroll records, including Form W-2, indicated that the annual pay scale for business agents was consistent based upon the years of service as a business agent. For example, all business agents hired in 2003 received the same gross annual salary after 2003 (2003 would have differed based upon the agent's start date). Therefore, business agents, Hood, John Miller and Curt Heitzman each received the same gross salary annually. However, for reasons that are not documented in any PSCOA records, Hood was given a retroactive increase that provided him an annual salary higher than any of the business agents who were higher in seniority to him. The worksheet used internally to calculate this pay increase indicated Hood was given a retroactive pay increase of $10,000 in 2003 (see Exhibit Q) and this raise was modified annually for the percentage increases given to all business agents. We found no evidence to support the validity of this increase.

Dated: December xx, 2010

By:

Bruce J. Brown, CPA/ABV, CFF, CVA

Business Agents Representing State Union

Employees Association

CONSTITUTION

R3

Constitution approved by BARSUEA Membership vote on September 24, 2010

PREAMBLE

We, the members of the Business Agents Representing State Union Employees Association, to secure the benefits of collective bargaining and collective action, to improve the living standards of our members and their families, to secure legislation in the interests of our members and to advance and maintain secure relationships between our members and their Employer and to otherwise enrich the lives of our members and their families, do hereby adopt this Constitution for the government of our Association.

ARTICLE I
NAME

The name of this organization shall be the Business Agents Representing State Union Employees Association ("BARSUEA" or "Association").

ARTICLE II PURPOSE AND OBJECTIVE

The purpose and objective of this Association shall be to improve the terms and conditions of employment of PSCOA employees who are members of the BARSUEA or who are eligible for such membership, to promote the welfare of such employees, to promote individual rights and recognition in the members' employment, to secure improved wages, hours, working conditions and other economic advantages for our members and their families through collective bargaining and through the advancement of the BARSYEA's standing in the community and in the labor movement, to safeguard and promote the principle of free collective bargaining, to promote the rights of workers and the security and welfare of all public employees and their families by political education and other community activity, to protect and preserve the BARSUEA as an institution and in the performance of its legal and contractual obligations, to protect and enhance the stature and well-being of our members and their families by promoting the passage of progressive legislation and to engage in such other actions and programs for which working people may lawfully combine, having in view their mutual protection and benefit.

ARTICLE III
JURISDICTION

BARSUEA shall have jurisdiction over all workers who are employed by the PSCOA excluding Elected Officers as contained in the PSCOA Constitution Article V, consistent with the Certification(s) issued by the Pennsylvania Labor Relations Board described in Article XI, Section 1(a), in addition to all other employees for whom the Association may gain bargaining rights in the future.

ARTICLE IV GOVERNMENT OF THE ASSOCIATION

Section 1. All the powers of the membership shall pass to and vest in the BARSUEA Executive Board.

ARTICLE V OFFICERS

Section 1. The officers of the BARSUEA shall consist of a President, a Vice President and a Secretary/Treasurer.

Section 2. The officers shall hold office for two (2) years or until their successors are duly chosen and have qualified. These positions shall be voluntary with zero compensation. Their terms, unless to fill a vacancy, shall commence on the first day following the date of their election.

Section 3. Duties of the President.

(a) The President shall be the principal executive and administrative officer of the BARSUEA. He or she shall enforce and comply with all laws of the BARSUEA and the policies established by the Executive

Board. The President shall have direction and supervision of all subordinate bodies, unless otherwise determined by the Executive Board, and shall exercise day-to-day supervision over the affairs of the BARSUEA, consistent with policies established by the Executive Board.

(b) The President shall preside at meetings of the BARSUEA membership.

(c) The President shall perform such other duties as the Constitution may require and provide regular reports concerning his or her acts or activities to the Executive Board.

(d) When the President makes a decision or issues an order to a subordinate body or to the officers or members thereof, the same shall be complied with until such decision or order is reversed by the Executive Board.

(e) When any question arises regarding the construction or interpretation of the Constitution, the President shall, in the first instance, decide any such question subject to the approval of the Executive Board. The President's interpretation and construction of the Constitution shall be accepted and shall be binding upon all parties, subordinate bodies, officers and members of the BARSUEA pending approval or change of such interpretation or construction of the Constitution by the Executive Board.

(j) The President, with the consent of the Executive Board, may appoint auditors whenever necessary to investigate discrepancies, errors or misconduct by officers of BARSUEA.

Section 4. Duties of the Vice President.

(a) The Vice President shall assist the President in carrying out his or her executive and administrative functions as set forth in the Constitution. The President may direct or delegate to the Vice President the authority to act for the President whenever the President deems it necessary or proper to do so.

(b) The Vice President shall be under the supervision and direction of the President and shall perform any and all duties assigned by the President and/or the Executive Board when in session.

(c) The Vice President shall comply with all policies established by the Executive Board.

Section 5. Duties of the Secretary/Treasurer

(a) The Secretary/Treasurer shall maintain all records of the BARSUEA, including, but not limited to, Minutes and records of all Executive Board and/or Membership meetings, as well as any other documents relating to the operation of the BARSUEA.

(b) The Secretary/Treasurer shall prepare and give notice of all Executive Board and/or Membership Meetings in a timely manner.

(c) The Secretary/Treasurer shall receive and account for all revenues of the BARSUEA.

(d) The Secretary/Treasurer shall preserve all important papers, accounts, letters and other documents relating to the business of the BARSUEA, subject to record retention and other policies established by

transmitted by the Secretary/Treasurer to all BARSUEA members.

(e) The Executive Board shall decide all points of law arising and all policies under the jurisdiction of the Association and all grievances and appeals, unless otherwise provided in this Constitution. The decisions of the Executive Board shall be in full force and effect unless reversed in accordance with the procedure set forth in the Constitution.

(f) The Executive Board is empowered to enter into agreements which, in its judgment, are in the best interests of the membership of the BARSUEA and to establish laws, policies and rules that are necessary to effectuate the purposes and objectives of the Association. The Executive Board shall have the ultimate power to interpret or construct the meaning of provisions set forth in this Constitution.

(g) The Executive Board may also establish general personnel policies, rules and regulations relating to employees of the BARSUEA.

(h) The orders and decisions of the Executive Board between Membership meetings are supreme. Officers of the BARSUEA and employees and members of the Association must obey them and faithfully carry them out. Any action by an officer, employee or member contrary to such decisions and orders shall constitute a violation of this section.

(k) When, for any reason, a vacancy occurs during a term of office among the officers or the Executive Board members of the BARSUEA, the Executive Board shall, as soon as may be practicable, but not more than sixty (60) days from the time the vacancy occurs, conduct an election to place a member in such vacancy for the remaining term of the office.

ARTICLE VII NOMINATIONS AND ELECTIONS

Section 1. Nomination and election of BARSUEA officers and Executive Board members:

(a) The election of officers and Executive Board members of the BARSUEA shall occur, by mail ballot or email, every two (2) years, commencing in the year 2010 immediately following ratification of this constitution. Incumbent Officers and Executive Board members of the BARSUEA appointed prior to the adoption of this Constitution shall be replaced by Officers and Executive Board members elected by the membership of BARSUEA as soon as possible but no later then 15 working days.

(b) In October of each election year, a mail ballot for the election of BARSUEA officers and Executive Board members shall be conducted by any member who volunteers and is not going to run for any position. Elections may be by email or mail ballot. All ballots shall be counted seven (7) days following the distribution of such ballot.

(c) Only active members in good standing shall be eligible as candidates for such position(s).

(d) Write-in ballots shall not be permitted in any election. Only the names of candidates who have been duly nominated for office shall appear on the mail ballot.

(e) A member may file a written protest concerning the conduct of the election within five (5) working days after certification of the election results and establish a process by which the membership shall fairly and impartially determine such protests.

(f) Officers and Executive Board members who have been certified as elected shall be sworn in and take office not later than the first day following their election. Where a pending election protest may affect only some, but not all, offices or Executive Board positions, the pendency of the election protest shall not cause a delay in the swearing in of the unaffected offices or Executive Board positions.

(g) In September of each election year, a Special Meeting of the membership shall be convened by the Executive Board for the purpose of receiving nominations for BARSUEA officers and Executive Board positions. Notice of the nomination meeting shall be given to all active members in good standing by Email at least five (5) days prior to the nomination meeting date.

(H) A member who is qualified to hold office or an Executive Board position may not be nominated for more than one such position. A member who is nominated must indicate his or her acceptance of the nomination at the meeting or, if he or she is unable to attend the meeting, the nomination must be accepted by means of a written communication to the member running the election, postmarked within twenty-four (24) hours following the conclusion of the nomination meeting. A member who does not accept the nomination pursuant to this provision shall not be eligible to be a candidate for office.

(I) In the event nominations are closed and there is no contest in relation to a particular office or the Executive Board positions, the Election Chair Member shall certify the candidate(s) as having been duly elected by acclimation and no election need be conducted in relation to such office or position. The special nomination meeting of the membership shall be chaired by the President, but the President shall transfer the Chair to the Chairperson of the Election Committee to conduct all business of the BARSUEA that relates to the nomination of candidates.

(m) Eligibility to hold the position of BARSUEA officer or Executive Board member. An active member in good standing shall be eligible to hold the position of BARSUEA officer or Executive Board member if:

(1) The member has been an active member in good standing of the BARSUEA.

(n) All officers and Executive Board members shall hold office until their successor is duly elected, qualified and installed.

(o) A member shall cease to be qualified to hold office if he or she loses status as an active member in good standing of the BARSUEA.

(p) Every active member in good standing shall have the right to nominate, vote for or otherwise support the candidate of his or her choice, subject to the provisions of this Constitution.

ARTICLE VIII
COMMITTEES

Section 1. The BARSUEA shall have the following standing Committees:

(a) Collective Bargaining Committee;

(B) Election Committee;

(h) Constitution and Bylaws Committee.

The purpose of each Committee shall be to research and review, and provide recommendations and advice to the Executive Board on matters falling within the purview of each respective Committee and to fulfill such other duties as may be set forth in the Constitution.

Section 2. The duties and responsibilities of each Committee shall be determined by the Executive Board, except as such duties may be specified in this Constitution.

Section 3. Members of each Committee shall be appointed by the President, upon approval by the Executive Board. Each Committee shall consist of at least two (2) members. The Finance Committee shall be chaired by the Secretary/Treasurer.

Section 4. The Executive Board may expand the membership of any standing Committee as needs or circumstances may determine. Standing Committees may not, however, have fewer members than are required by the Constitution.

Section 5. Committee members may be removed from service on a Committee for good and sufficient reasons by action of the Executive Board.

Section 6. The Recording Secretary of each Committee shall provide copies of all Committee Minutes to members of the BARSUEA as soon as may be practicable after each Committee meeting. Records of all Committees shall be available to members of the Executive Board for inspection at any time.

Section 7. The Executive Board may establish additional special Committees as it deems necessary.

ARTICLE XI MEMBERSHIP

Section 1. Membership in the BARSUEA shall consist of the following classifications:

(a) Active members: All active employees of the Pennsylvania State Corrections Officer Association whose job titles place them within the classification(s) included under the certifications of the Pennsylvania Labor Relations Board or recognitions set forth below, shall be members of the BARSUEA if the individual otherwise satisfies the requirements for membership in good standing set forth in the Constitution and policies adopted by the BARSUEA Executive Board including payment of full financial obligation(s) to the BARSUEA pursuant to its rules and regulations (PERA Case Nos. R-776-C; R-1062-C; R-1066-C; U-86-477-E; U-89500-E and any successor or supplementary certifications or recognitions that may be achieved by the Association).

Section 2. The benefits of membership as set forth in this Constitution are strictly reserved to active

members in good standing.

Section 3. All rights not expressly reserved to other persons and/or bodies in this Constitution shall be reserved to the active members of the BARSUEA. These include the right(s) to ratify negotiated collective bargaining agreements, the right to approve all amendments to this Constitution and the right to vote in BARSUEA elections consistent with provisions set forth in this Constitution.

Section 4. A special or general session meeting of the membership may be convened at any time by the Executive Board. The Executive Board shall determine the date, time and place for the meeting and shall determine the agenda for the meeting. The President or his/her designee shall chair the meeting. The Secretary/Treasurer shall cause to notify via email the membership of the date, time, purpose and location of the membership meeting.

ARTICLE XII DUES

The dues for active members shall be five Dollars ($5.00) for office staff, and ten dollars ($10.00) for Business Agents, per pay period, payable to the BARSUEA Secretary/Treasurer. When the BARSUEA account reaches Twenty Thousand dollars ($20,000.00) the membership will hold a vote at the following months membership meeting to discuss ceasing Union dues until such time that the funds drop below the above amount.

ARTICLE XIII FUNDS AND PROPERTY OF THE ASSOCIATION AND ITS SUBORDINATE BODIES

Section 1. All funds and/or property of the BARSUEA, derived from any source, shall be held in the name of the BARSUEA, and shall not be transferred or conveyed to any other person, body, committee, entity or organization, whether incorporated or unincorporated, except as permitted in this Constitution. Nothing in this provision shall prevent the Executive Board from paying any properly authorized bill or obligation of the BARSUEA in accordance with provisions set forth in this Constitution.

Section 2. The funds and/or property of the BARSUEA shall be used for such purposes only as are specified in this Constitution or in accordance with policies duly adopted and approved by the Executive Board. No member, or his or her heirs, administrators, executors or assigns, or any other person, shall possess any right, title, interest or claim of any kind, actual or beneficial, in the funds, property, assets, entitlements or expectancies of this BARSUEA.

Section 3. In no event shall the funds, property or assets of the BARSUEA be loaned or donated to members. This provision shall not prohibit the BARSUEA from establishing a special fund for use as strike benefits, sick or disability benefits or for other like or related purposes in accordance with standards and guidelines that may be established by the Executive Board.

Section 4. If it deems it necessary or appropriate to protect the funds, property or assets of the BARSUEA, the Executive Board shall be empowered to incorporate the BARSUEA pursuant to the Pennsylvania Non-Profit Corporations Law or to form such other legal entity or Trust as may be necessary to protect the interests of members of the BARSUEA. In such event, the governing documents of such corporation or other legal entity or Trust shall maintain the basic structure of this

Constitution, to the maximum extent permissible by law.

ARTICLE XIV CHARGES, TRIALS AND APPEALS

The BARSUEA Executive Board shall be empowered to approve rules and procedures that will govern charges that may be filed by members of the BARSUEA against BARSUEA officers and/or Executive Board members and members and the trials and appeals that may occur in relation to such charges; provided, however, the rules and/or policies in relation to such charges, trials and/or appeals shall not be inconsistent or in conflict with the provisions set forth in Appendix B of this Constitution..

ARTICLE XVI AMENDMENT

This Constitution may be amended under the following procedures:

Section 1. A proposed amendment to the Constitution shall be forwarded to the Constitution Committee. The Constitution committee shall discuss said amendment and present their recommendations at the next scheduled membership meeting. Should the membership vote to remove said proposal at this meeting, the proposal shall be withdrawn. Should the membership vote to pursue said proposal, majority vote shall rule on the said amendment.

ARTICLE XVII SEVERABILITY

The provisions of this Constitution are severable and, if any of the provisions herein shall be found to be unlawful or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

ARTICLE XVII
DISSOLUTION

Dissolution of this Association, may occur only as required or permitted by the laws of the Commonwealth of Pennsylvania

R-4

MEMORANDUM

TO: FILE

FROM: RTE

DATE: 4-4-12

RE: PSCOA and BARSUEA

On April 4, 2012, myself, Tim Walsh, Jason Bloom and Bob Storm met with Larry Sonnie, President of BARSUEA to engage in bargaining pursuant to the Labor Board's decision of March 23, 2012. It should be noted that although Roy Pinto received an e-mail from one of the removed business agents, Patricia Hurd, requesting bargaining with respect to the effects of the removal of the business agents, no request for bargaining was received from an official of BARSUEA. However, PSCOA contacted President Larry Sonnie and scheduled a meeting for 1:30 p.m. on April 4, 2012.

I started off the meeting by telling Larry Sonnie that we were here pursuant to the Labor Board's Order and that we are not forcing him or BARSUEA to do anything.

I told Larry Sonnie that we were complying with the Labor Board's Order by:

1. Posting the Notice from the Board on PSCOA's bulletin board and e-mailing it to the members of BARSUEA;
2. Offering Sonya Corish reinstatement, which was done by letter dated April 4, 2011, after which she waived reinstatement and signed a settlement agreement in exchange for receiving back pay;
3. That we were going to bargain over the effects of removing the business agents, which included a review of the two week backpay remedy the Administrative Law Judge suggested in this matter.

I provided Larry Sonnie with documentation establishing what the backpay amount would be for the five removed business agents for a two week period immediately preceding their removal. I also provided Larry Sonnie with information establishing that the removed business agents were paid for one week (August 22, 2010 to August 28, 2010) after they were removed when no obligation to pay them existed. Finally, I provided Larry Sonnie with information that the removed business agents were paid invalid and unsubstantiated mileage reimbursement for July 1, 2007 through June 7, 2010. The information that I provided to Larry Sonnie is attached hereto. I stated to Larry Sonnie that PSCOA did not believe that there was an effect upon the

business agents due to their removal in that they received one week's pay in which they were not obligated to receive and also received invalid and unsubstantiated mileage reimbursement.

I asked Larry Sonnie whether or not the business agents sent him any proposals to which he stated no. I asked Larry Sonnie whether or not the removed business agents were aware that he was still President, to which he stated yes based upon the fact that he sent them correspondence in the past. At that point in time, the parties caucused.

After the caucus, I asked Larry Sonnie whether he had any proposals as President of BARSUEA. He stated no. I then presented Larry Sonnie with the following offer. In light of the fact that the removed business agents received pay from August 22, 2010 to August 28, 2010 from PSCOA when they did not work for PSCOA, the amount of the two week backpay period would be reduced by the one week pay received by the removed business agents. In addition, I informed him that in light of the fact that the removed business agents received invalid and unsubstantiated mileage reimbursement, from July 1, 2007 to June 30, 2010, the backpay that we were offering would only act as a credit to reduce the amount of invalid and unsubstantiated mileage received by the removed business agents, and that PSCOA would not seek reimbursement for the one week backpay amount in any subsequent civil action.

I informed Larry Sonnie that I would confirm our offer in writing. At that point, negotiations ceased.

INTERNET FORM NLRB-502 (2-08)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- [ ] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [✓] RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) [ ] In unit not previously certified. [ ] In unit previously certified in Case No. _____
- [ ] AC-AMENDMENT OF CERTIFICATION- Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer	Employer Representative to contact	Tel. No.
Pennsylvania State Corrections Officers Ass	Roy Pinto, President	717-364-1700

3. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code)	Fax No.
2421 North Front Street, Harrisburg, PA 17110	717-364-1700

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Identify principal product or service	Cell No. 717-6484893
Union	Bargaining Agent, Pa State Employees	e-Mail rpinto@pscoa.org

5. Unit Involved *(In UC petition, describe present bargaining unit and attach description of proposed clarification.)*

Included
The PSCOA hereby recognizes BARSUEA as the sole and exclusive bargaining agent on behalf employees holding positions Identified in the certification of the unit issued by the National Labor Relations Board.
Excluded

6a. Number of Employees in Unit:
Present 18
Proposed *(By UC/AC)*

6b. Is this petition supported by 30% or more of the employees in the unit?* [✓] Yes [ ] No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [ ] Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.)		Affiliation	
Business Agents Representing State Union Employees Association			
Address	Tel. No.	Date of Recognition or Certification July 21, 2010	
PO Box 60561		Fax No.	e-Mail
Harrisburg, Pa 17106-0561	Cell No.		

9. Expiration Date of Current Contract. If any (Month, Day, Year)	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)
December 31, 2011	

11a. Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes [ ] No [ ]	11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of *(Insert Name)* _____, a labor organization, of *(Insert Address)* _____ Since *(Month, Day, Year)* _____

12. Organizations or individuals other than Petitioner (and other than those named in Items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)

14a. Address *(street and number, city, state, and ZIP code)*	14b. Tel. No. EXT	14c. Fax No.
	14d. Cell No.	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(to be filled in when petition is filed by a labor organization)*

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title *(if any)*
Shawn J. Smith	Shawn J. Smith	IT Administrator

Address *(street and number, city, state, and ZIP code)*	Tel. No. 814-355-3903	Fax No. none
747 W Water St., Bellefonte Pa 16823	Cell No. 814-880-8852	eMail bellcity4@gmail.com

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

We the undersign, no longer wish to be represented by Business Agents Representing State Union Employees Association for the purposes of collective bargaining or any other matters.

Full Name	Signature	Date
Ralph O. Tressler Jr.	Ralph O Tressler	1-18-12
Gene S. Ortlip	Gene S Ortlip	1-18-12
Shawn J. Smith	Shawn J. Smith	1-18-12

We the undersign, no longer wish to be represented by Business Agents Representing State Union Employees Association for the purposes of collective bargaining or any other matters.

Full Name	Signature	Date
Rhonda L. Barger	Rhonda L Barger	01/18/2012
Jack L. Mottin	[signature]	01/18/12
Timothy F. Crytzer Sr.	[signature]	01-18-12
Robert E Grajeda Jr.	[signature]	01-18-12
Michael Machite	[signature]	1-18-12
Mark Truszkowski	[signature]	1-20-12
Kevin T Quitter	[signature]	1/20/2012
James Chernavaso	James Chernavaso	1/20/2012

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

Employer

and

SHAWN J. SMITH — Case 4–RD–073261

Petitioner

and

BUSINESS AGENTS REPRESENTATING
STATE UNION EMPLOYEES ASSOCIATION

Union Involved

EXHIBIT NO. Rx6 RECEIVED ✓ REJECTED ____
CASE NO. ____ CASE NAME P.S.C.O.A.
NO. OF PAGES 1 DATE 4/14/14 REPORTER BCW

NOTICE OF INDEFINITE POSTPONEMENT OF HEARING

PLEASE TAKE NOTICE that the hearing in the above-entitled matter, previously scheduled for February 6, 2012 is hereby postponed until further notice.

Signed at Philadelphia, Pennsylvania this 31st day of January, 2012.

Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 4
615 CHESTNUT ST
STE 710
PHILADELPHIA, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

R7

March 7, 2012

SHAWN J. SMITH
747 W. WATER ST
BELLEFONTE, PA 16823-2732

Re: PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION
Case 04-RD-073261

Dear Mr. SMITH:

The above-captioned case petitioning for an investigation and decertification of representative under Section 9(c) of the National Labor Relations Act, as amended, as been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are unwarranted. On October 29, 2010, a Consolidated Complaint issued in Cases 04-CA-037648, 04-CA-037649 and 04-CA-037652. The Consolidated Complaint, as amended on November 17, 2010, alleges that Pennsylvania State Corrections Officers Association (the Employer) violated Section 8(a)(1) and (5) of the Act by repudiating a collective bargaining agreement (the 2010 Agreement) between the Employer and Business Agents Representing State Union Employees Association (the Union), discharging employees without affording the Union an opportunity to bargain concerning the discharges and their effects, and failing to provide relevant information to the Union. A hearing on these unfair labor practice allegations of the Consolidated Complaint was held on January 26 and 27, 2011, an Administrative Law Judge's Decision issued on March 11, 2011, and Exceptions to the Decision were filed on April 14, 2011 and are currently pending before the Board. The 2010 Agreement was effective by its terms from July 19, 2010 to July 19, 2015. If the Board upholds the Consolidated Complaint allegation with respect to the 2010 Agreement, then the remedy for this violation will include a requirement that the Employer, at the Union's request, retroactively give effect to, and abide by, the 2010 Agreement. The 2010 Agreement, if it had remained in effect, would have served as a bar to an election for three years, until July 2013. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958); *Hexton Furniture Co.*, 111 NLRB 342 (1955). During that three-year period, no question concerning representation could be raised. The instant petition was filed on January 26, 2012, which is during the three-year period. Thus, if the Consolidated Complaint allegation is upheld, the instant petition would be untimely. Accordingly, I am dismissing the petition, subject to reinstatement, if appropriate, upon conclusion of the unfair labor practice proceedings. *Big Three Industries*, 201 NLRB 197 (1973). See also NLRB Casehandling Manual Part Two Representation Proceedings, Section 11730.3(b). You are also being made a party in interest to the unfair labor practice proceedings

limited solely to receipt of the Orders or other documents that formally dispose of those proceedings.

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **March 21, 2012, at 5 p.m.** (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically**. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[1] A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at **www.nlrb.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director

---

[1] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

cc:

TODD EAGEN, ESQUIRE
LIGHTMAN WELBY STOLTENBERG & CAPUTO
600 LINDEN STREET
3RD FLOOR
SCRANTON, PA 18503

ROY PINTO , PRESIDENT
PENNSYLVANIA STATE CORRECTIONS OFFICERS
ASSOCIATION
2421 N FRONT ST
HARRISBURG, PA 17110-1110

LARRY SONNIE , PRESIDENT
C/O PSCOA MAIN OFFICE
2421 NORTH FRONT STREET
HARRISBURG, PA 17110

LIGHTMAN WELBY STOLTENBERG & CAPUTO
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*Pittsburgh Office
330 Grant Street
The Grant Building, Suite 2620
Pittsburgh, PA 15219
Telephone 412-562-0111
Fax 412-562-0675

April 4, 2012

Via e-mail only lsonnie@pscoa.org

Larry Sonnie, President
Business Agents Representing State Union Employees Association
2421 North Front Street
Harrisburg, PA 17110

Re: Pennsylvania State Corrections Officers Association – and – Business Agents Representing State Union Employees Association
Cases 4-CA-37648, 37649 and 37652

Dear Larry:

Thank you for taking the time to participate in negotiations this date with the Pennsylvania State Corrections Officers Association regarding the backpay and effects of the removal of the business agents. As I indicated at the end of the collective bargaining session this date, PSCOA wishes to make the following offer:

Backpay at the rate of the removed business agents' normal wages *without deducting net interim earnings* for a 2-week period in the following amounts:

Lee Dyches $4,740.70;
Shawn Hood $4,294.11;
Patricia Hurd $4,202.21;
John Miller $3,862.00; and
Bill Parke $4,303.88.

In light of the fact that the removed business agents received pay from August 22, 2010 to August 28, 2010 from PSCOA when they did not work for PSCOA, the amount of backpay will be reduced accordingly by the following amounts:

JX-1

Lee Dyches $2,370.35;
Shawn Hood $2,147.05;
Patricia Hurd $2,101.10;
John Miller $1,931.00; and
Bill Parke $2,151.94.

Consequently, the amount of backpay is as follows:

Lee Dyches $2,370.35;
Shawn Hood $2,147.05;
Patricia Hurd $2,101.10;
John Miller $1,931.00; and
Bill Parke $2,151.94.

lawsuits / offsets

In light of the fact that the removed business agents received invalid and unsubstantiated mileage reimbursement for July 1, 2007 to June 30, 2010 as referenced above, the amount of backpay will be a *credit only* to reduce the amount of invalid and unsubstantiated mileage received by the removed business and PSCOA will not seek reimbursement for that amount only in any subsequent civil action.

I wish to point out that the credit that the removed business agents would receive does not take into account any interim earnings received by the removed business agents. Please review the above and take whatever necessary action you feel is necessary in this matter. Please note that I will wait until 5:00 p.m., April 6, 2012, for your response. Our office is closed this Friday but you can reach me on my cell phone or email. Thereafter, because of the time constraints set forth in the Labor Board's Order, I will consider the parties at impasse and implement the above offer as PSCOA's final offer.

Again, thank you for taking the time out of your busy schedule to bargain with PSCOA this date. As always, if you have any questions or concerns, please do not hesitate to contact me at your convenience.

Very truly yours,

Richardson Todd Eagen

RTE/jal
cc: PSCOA via e-mail only

Business Agents Representing State Union Employees Association
PO Box 60561
Harrisburg, PA 17106-0561

Richardson Todd Eagan
Lightman Welby Stoltenberg & Caputo
Attorney at Law
2705 N. Front St.
Harrisburg, PA 17110

Mr. Eagen,

In response to your offer sent April 4, 2012 addressing the negotiations of the former PSCOA Business Agents BARSUEA would like to make a counter offer,

Shawn Hood- 2 weeks' severance pay, 70 days' vacation paid back, $1,088 unpaid phone bill and last 6 weeks of mileage that was never received.

Lee Dyches- 2 weeks' severance pay and all unused vacation paid back.

Patricia Hurd- 2 weeks' severance pay and all unused leave paid back.

John Miller- 2 weeks' severance pay and all unused leave paid back.

Bill Parke- 2 weeks' severance pay and all unused leave paid back.

This leave has been paid back to other agents that have either retired or terminated employment from PSCOA. There has been no proof of invalid or unsubstantiated mileage so to hold any payments in hopes that it can be substantiated is not right.

Sincerely,

Larry Blackwell
BARSUEA V.P.

JX-2

LIGHTMAN WELBY STOLTENBERG & CAPUTO
ATTORNEYS AT LAW

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Pittsburgh, PA 15219
Telephone 412-562-0111
Fax 412-562-0675

April 11, 2012

Via e-mail lhblackwell@comcast.net and regular mail

Larry Blackwell, Vice President
Business Agents Representing State Union Employees Association
2421 North Front Street
Harrisburg, PA 17110

Re: Pennsylvania State Corrections Officers Association – and – Business Agents Representing State Union Employees Association, Cases 4-CA-37648, 37649 and 37652

Dear Mr. Blackwell:

This letter will acknowledge receipt of the former business agents' counter-offer which was received by me and the PSCOA on April 10, 2012 via e-mail. Please be advised that PSCOA rejects the counter-offer. We believe that the counter-offer is in of itself unreasonable and believe that the parties are at impasse. Consequently, we will implement the offer that was e-mailed to BARSUEA President Larry Sonnie on April 4, 2012, as our final offer.

In addition to believing that the counter-offer is unreasonable, I put forth the following. BARSUEA requests payment for unused vacation and sick leave pay. As you are aware, when a business agent is released from the Pennsylvania Department of Corrections to work as a business agent for PSCOA, their vacation and sick leave benefits continue to accumulate with the Department of Corrections during their release. When they are business agents from PSCOA, no vacation and sick leave is deducted from their accumulated leave banks by the Pennsylvania Department of Corrections. Furthermore, during the removed business agents' tenure with PSCOA, a liberal leave practice existed and no records were maintained on vacation and sick leave used by the removed business agents. There is no record of any accumulated vacation and sick leave because no official records were kept by the former administration of PSCOA. In summary, PSCOA believes that there has been no effect in regard to vacation and sick leave time for the removed business agents. Because they continued to receive credit for

JX-3

vacation and sick leave from the Pennsylvania Department of Corrections during their release period to the PSCOA, they did not lose any benefits during that time period.

As to removed business agent Shawn Hood's claim for an unpaid phone bill, PSCOA also maintains that this is not a valid expense of the PSCOA because it is his personal cell phone. Consequently, PSCOA cannot be held responsible for a personal bill of Shawn Hood.

Finally, Shawn Hood is asking for reimbursement for six weeks of mileage. You indicate in your letter that there is no proof of invalid or unsubstantiated mileage so that any credit would be inappropriate. Your statement is not only incorrect, but is surprising due to the fact that you are well aware that the PSCOA conducted a forensic audit of mileage reimbursement for its employees. At the end of the forensic audit, a report was compiled and submitted to all of the Board members of PSCOA for review. I gave a copy of the summary of the audit to Larry Sonnie, President of BARSUEA, on April 4, 2012 during the collective bargaining negotiations session between PSCOA and BARSUEA. Therefore, proof of the invalid or unsubstantiated mileage reimbursements to all of the removed business agents has been clearly established and provided to BARSUEA.

Again, as indicated above, PSCOA believes that impasse has occurred and will implement its final offer which was given to BARSUEA on April 4, 2012. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Richardson Todd Eagen

Richardson Todd Eagen

RTE/jal

cc: PSCOA via e-mail only

Richard E. Freeburn, Esquire
FREEBURN & HAMILTON, PC
ID No. 30965
2040 Linglestown Road, Ste. 300
Harrisburg PA 17110
(717) 671-1955
freeburn@pa-injurylawyer.com

Attorney for Plaintiffs

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION, an unincorporated association, by Roy Pinto, Trustee Ad Litem Plaintiff,	:	IN THE COURT COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
	:	NO. 2012-CV-3806-CV
v.	:	CIVIL ACTION – LAW
LEE J. DYCHES, III, Defendant,	:	

COMPLAINT

AND NOW, comes Plaintiff, Pennsylvania State Corrections Officers Association, by its attorneys, Freeburn & Hamilton, PC, and files the following Complaint:

1. Plaintiff, Pennsylvania State Corrections Officers Association (hereinafter referred to as "PSCOA"), is an unincorporated association with offices located 2441 North Front Street, Harrisburg, Dauphin County, Pennsylvania 17110.

2. At all times relevant hereto, Roy Pinto is a member of PSCOA, and brings this action as Trustee Ad Litem.

3. Defendant, Lee J. Dyches, III, is an adult individual who resides 106 Hunsberger Drive, Limerick, Montgomery County, Pennsylvania 19468.

4. Since June 2001, Plaintiff, PSCOA, has been the exclusive representative for collective bargaining purposes for correctional officers employed by the Commonwealth of Pennsylvania's Department of Corrections.

JX-4

5. At all times relevant hereto, Plaintiff employed individuals to serve as its executive officers, business agents and administrative personnel.

6. At all times relevant hereto, Plaintiff employed Defendant, Lee J. Dyches, III, as a business agent.

7. At all times relevant hereto, business agents employed by Plaintiff were provided reimbursement for use of their own vehicles while on PSCOA business at the rate established by the Internal Revenue Service.

8. On or about July 20, 2010, Roy Pinto was sworn in as President of PSCOA.

9. After Mr. Pinto was sworn into office, Plaintiff hired a certified public accounting firm to complete a forensic investigation as to whether certain former business agents and former executive officers, including Defendant, submitted and were reimbursed excessive mileage expenses.

10. The forensic investigation found that Defendant submitted claims for mileage reimbursement expenses of 189,383 miles for the period of July 1, 2007 through June 30, 2010, but was only able to authenticate 39,589 miles for this period.

11. Defendant received more than $100,572.00 for 189,383 miles.

12. Plaintiff believes that Defendant was entitled to mileage reimbursement in the amount of $20,712.00 for 39,589 miles for the period of July 1, 2007 through June 30, 2010.

13. Based upon the foregoing, Plaintiff reasonably believes that Defendant, Lee J. Dyches, III received excess mileage reimbursements totaling $79,860.00 for the period of July 1, 2007 through June 30, 2010.

COUNT I - FRAUD, DECEIT AND INTENTIONAL MISREPRESENTATION

PSCOA, Plaintiff v. Lee J. Dyches, III, Defendant

14. Paragraphs 1-13 are incorporated herein by reference thereto.

15. Plaintiff reasonably believes that Defendant, Lee J. Dyches, III, made false or fraudulent representations to Plaintiff, PSCOA, in regards to the number of reimbursable miles he traveled for PSCOA business purposes for the period of July 1, 2007 through June 30, 2010.

16. Defendant claimed 189,383 miles for mileage reimbursement for the period of July 1, 2007 through June 30, 2010, but only 39,589 miles could be authenticated by the forensic investigation.

17. When Defendant made these representations, he knew them to be false, and these representations were made by Defendant with the intent to defraud and deceive Plaintiff and with the intent to induce Plaintiff to act in the manner herein alleged.

18. Plaintiff reasonably relied upon Defendant's fraudulent representations as to his entitlement to mileage reimbursement.

19. As a result of Defendant's fraud, deceit and intentional misrepresentations, Plaintiff has been damaged by paying excess mileage reimbursements to Defendant, Lee J. Dyches, III, in the sum of $79,860.00.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, jointly and severally, in the amount of SEVENTY-NINE THOUSAND EIGHT HUNDRED SIXTY & 00/100 ($79,860.00) DOLLARS plus reasonable interest and costs.

COUNT II – CONVERSION

PSCOA, Plaintiff v. Lee J. Dyches, III, Defendant

20. Paragraphs 1-19 are incorporated herein by reference thereto.

21. On information and belief, Defendant, Lee J. Dyches, III, received and does not intend to return the $79,860.00 that he unlawfully or improperly obtained from Plaintiff, PSCOA, for the period of July 1, 2007 through June 30, 2010.

22. Defendant knew that the property rightfully and legally belonged to Plaintiff, but has converted the same to his own use and has refused and continues to refuse to return the $79,860.00 to the custody and control of Plaintiff.

23. Defendant is exercising unlawful control and possession over the $79,860.00 despite having no right, title or equitable claim to the ownership and/or possession of the $79,860.00.

24. On information and belief, Defendant intends to deprive Plaintiff of the $79,860.00.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, Lee J. Dyches, III, in the amount of SEVENTY-NINE THOUSAND EIGHT HUNDRED SIXTY & 00/100 ($79,860.00) DOLLARS plus reasonable interest and costs

COUNT III - UNJUST ENRICHMENT

PSCOA, Plaintiff v. Lee J. Dyches, III, Defendant

25. Paragraphs 1-24 are incorporated herein by reference thereto.

26. Defendant, Lee J. Dyches, III, was unjustly enriched at Plaintiff's expense in the amount of $79,860.00 for the acts alleged herein.

27. Defendant has appreciated from the benefit of the $79,860.00.

28. It would be inequitable and unconscionable to allow Defendant, Lee J. Dyches, III, to accept and retain this benefit.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, Lee J. Dyches, III, in the amount of SEVENTY-NINE THOUSAND EIGHT HUNDRED SIXTY & 00/100 ($79,860.00) DOLLARS plus reasonable interest and costs.

COUNT IV – BREACH OF FIDUCIARY DUTY

PSCOA, Plaintiff v. Lee J. Dyches, III, Defendant

29. Paragraphs 1-28 are incorporated herein by reference thereto.

30. Defendant, Lee J. Dyches, III, was employed as a business agent by Plaintiff, PSCOA, throughout the period of July 1, 2007 through June 30, 2010.

31. Defendant's acts alleged herein, including the fraudulent representations of reimbursable miles, were detrimental to Plaintiff.

32. At the time of Defendant's misrepresentations, Defendant owed a fiduciary duty to Plaintiff to act in the best interests of the organization and its members.

33. Defendant knowingly violated the duties of trust and loyalty owed to the organization and its members.

34. The alleged acts were undertaken by Defendant willfully and maliciously, in bad faith, and for the purpose of injuring Plaintiff.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, Lee J. Dyches, III, in the amount of SEVENTY-NINE THOUSAND EIGHT HUNDRED SIXTY & 00/100 ($79,860.00) DOLLARS plus reasonable interest and costs.

Respectfully Submitted,

FREEBURN & HAMILTON, PC

By: _____

Richard E. Freeburn, Esquire
I.D. No. 30965
2040 Linglestown Rd., Ste. 300
Harrisburg, PA 17110
(717) 671-1955

Date: 08/07/12

Counsel for Plaintiff

VERIFICATION

I hereby verify that the statements in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: 7/13/17

Roy Pinto

Roy Pinto

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Plaintiff's Complaint** was duly served on the 7th day of August, 2012, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Lee J. Dyches, III
106 Hunsberger Drive
Limerick PA 19468

BY: Georgianne J. Hess

Georgianne J. Hess, Assistant to
Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
2040 Linglestown Road, Ste. 300
Harrisburg, PA 17110
(717) 671-1955

Dated: 08/07/12

Attorney for Plaintiffs

Richard E. Freeburn, Esquire
FREEBURN & HAMILTON, PC
ID No. 30965
2040 Linglestown Road, Ste. 300
Harrisburg PA 17110
(717) 671-1955
freeburn@pa-injurylawyer.com

Attorney for Plaintiffs

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION, an unincorporated association, by Roy Pinto, Trustee Ad Litem Plaintiff,	:	IN THE COURT COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA NO. 2012-CV-3809-CV
v.	:	CIVIL ACTION – LAW
PATRICIA A. HURD, Defendant,	:	

COMPLAINT

AND NOW, comes Plaintiff, Pennsylvania State Corrections Officers Association, by its attorneys, Freeburn & Hamilton, PC, and files the following Complaint:

1. Plaintiff, Pennsylvania State Corrections Officers Association (hereinafter referred to as "PSCOA"), is an unincorporated association with offices located 2441 North Front Street, Harrisburg, Dauphin County, Pennsylvania 17110.

2. At all times relevant hereto, Roy Pinto is a member of PSCOA, and brings this action as Trustee Ad Litem.

3. Defendant, Patricia A. Hurd, is an adult individual who resides at 520 Barkley Church, Homer City, Indiana County, Pennsylvania 15748.

4. Since June 2001, Plaintiff, PSCOA, has been the exclusive representative for collective bargaining purposes for correctional officers employed by the Commonwealth of Pennsylvania's Department of Corrections.

JX-5

5. At all times relevant hereto, Plaintiff employed individuals to serve as its executive officers, business agents and administrative personnel.

6. At all times relevant hereto, Plaintiff employed Defendant, Patricia A. Hurd, as a business agent.

7. At all times relevant hereto, business agents employed by Plaintiff were provided reimbursement for use of their own vehicles while on PSCOA business at the rate established by the Internal Revenue Service.

8. On or about July 20, 2010, Roy Pinto was sworn in as President of PSCOA.

9. After Mr. Pinto was sworn into office, Plaintiff hired a certified public accounting firm to complete a forensic investigation as to whether certain former business agents and former executive officers, including Defendant, submitted and were reimbursed excessive mileage expenses.

10. The forensic investigation found that Defendant submitted claims for mileage reimbursement expenses of 102,038 miles for the period of July 1, 2007 through June 30, 2010, but was only able to authenticate 83,780 miles for this period.

11. Defendant received approximately $53,792.00 for 102,038 miles.

12. Plaintiff believes that Defendant was entitled to mileage reimbursement in the amount of $44,342.00 for 83,780 miles for the period of July 1, 2007 through June 30, 2010.

13. Based upon the foregoing, Plaintiff reasonably believes that Defendant, Patricia A. Hurd received excess mileage reimbursements totaling $9,450.00 for the period of July 1, 2007 through June 30, 2010.

COUNT I - FRAUD, DECEIT AND INTENTIONAL MISREPRESENTATION

PSCOA, Plaintiff v. Patricia A. Hurd, Defendant

14. Paragraphs 1-13 are incorporated herein by reference thereto.

15. Plaintiff reasonably believes that Defendant, Patricia A. Hurd, made false or fraudulent representations to Plaintiff, PSCOA, in regards to the number of reimbursable miles she traveled for PSCOA business purposes for the period of July 1, 2007 through June 30, 2010.

16. Defendant claimed 102,038 miles for mileage reimbursement for the period of July 1, 2007 through June 30, 2010, but only 83,780 miles could be authenticated by the forensic investigation.

17. When Defendant made these representations, she knew them to be false, and these representations were made by Defendant with the intent to defraud and deceive Plaintiff and with the intent to induce Plaintiff to act in the manner herein alleged.

18. Plaintiff reasonably relied upon Defendant's fraudulent representations as to her entitlement to mileage reimbursement.

19. As a result of Defendant's fraud, deceit and intentional misrepresentations, Plaintiff has been damaged by paying excess mileage reimbursements to Defendant, Patricia A. Hurd, in the sum of $9,450.00.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, jointly and severally, in the amount of NINE THOUSAND FOUR HUNDRED FIFTY & 00/100 ($9,450.00) DOLLARS plus reasonable interest and costs.

COUNT II – CONVERSION

PSCOA, Plaintiff v. Patricia A. Hurd, Defendant

20. Paragraphs 1-19 are incorporated herein by reference thereto.

21. On information and belief, Defendant, Patricia A. Hurd, received and does not intend to return the $9,450.00 that she unlawfully or improperly obtained from Plaintiff, PSCOA, for the period of July 1, 2007 through June 30, 2010.

22. Defendant knew that the property rightfully and legally belonged to Plaintiff, but has converted the same to her own use and has refused and continues to refuse to return the $9,450.00 to the custody and control of Plaintiff.

23. Defendant is exercising unlawful control and possession over the $9,450.00 despite having no right, title or equitable claim to the ownership and/or possession of the $9,450.00.

24. On information and belief, Defendant intends to deprive Plaintiff of the $9,450.00.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, Patricia A. Hurd, in the amount of NINE THOUSAND FOUR HUNDRED FIFTY & 00/100 ($9,450.00) DOLLARS plus reasonable interest and costs.

COUNT III - UNJUST ENRICHMENT

PSCOA, Plaintiff v. Patricia A. Hurd, Defendant

25. Paragraphs 1-24 are incorporated herein by reference thereto.

26. Defendant, Patricia A. Hurd, was unjustly enriched at Plaintiff's expense in the amount of $9,450.00 for the acts alleged herein.

27. Defendant has appreciated from the benefit of the $9,450.00.

28. It would be inequitable and unconscionable to allow Defendant, Patricia A. Hurd, to accept and retain this benefit.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, Patricia A. Hurd, in the amount of NINE THOUSAND FOUR HUNDRED FIFTY & 00/100 ($9,450.00) DOLLARS plus reasonable interest and costs.

COUNT IV – BREACH OF FIDUCIARY DUTY

PSCOA, Plaintiff v. Patricia A. Hurd, Defendant

29. Paragraphs 1-28 are incorporated herein by reference thereto.

30. Defendant, Patricia A. Hurd, was employed as a business agent by Plaintiff, PSCOA, throughout the period of July 1, 2007 through June 30, 2010.

31. Defendant's acts alleged herein, including the fraudulent representations of reimbursable miles, were detrimental to Plaintiff.

32. At the time of Defendant's misrepresentations, Defendant owed a fiduciary duty to Plaintiff to act in the best interests of the organization and its members.

33. Defendant knowingly violated the duties of trust and loyalty owed to the organization and its members.

34. The alleged acts were undertaken by Defendant willfully and maliciously, in bad faith, and for the purpose of injuring Plaintiff.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, Patricia A. Hurd, in the amount of NINE THOUSAND FOUR HUNDRED FIFTY & 00/100 ($9,450.00) DOLLARS plus reasonable interest and costs.

Respectfully Submitted,

FREEBURN & HAMILTON, PC

By: _____

Richard E. Freeburn, Esquire
I.D. No. 30965
2040 Linglestown Rd., Ste. 300
Harrisburg, PA 17110
(717) 671-1955

Date: 08/07/12

Counsel for Plaintiff

VERIFICATION

I hereby verify that the statements in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: 7/13/12

Roy Pinto

Roy Pinto

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Plaintiff's Complaint** was duly served on the 7th day of August, 2012, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Patricia A. Hurd
520 Barkley Church
Homer City PA 15748

BY: Georgianne J. Hess

Georgianne J. Hess, Assistant to
Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
2040 Linglestown Road, Ste. 300
Harrisburg, PA 17110
(717) 671-1955

Dated: 08/07/12

Attorney for Plaintiffs

Richard E. Freeburn, Esquire
FREEBURN & HAMILTON, PC
ID No. 30965
2040 Linglestown Road, Ste. 300
Harrisburg PA 17110
(717) 671-1955
freeburn@pa-injurylawyer.com

Attorney for Plaintiffs

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION, an unincorporated association, by Roy Pinto, Trustee Ad Litem Plaintiff,	:	IN THE COURT COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA NO. 2012-CV-3813-CV
v.	:	CIVIL ACTION – LAW
JOHN A. MILLER, Defendant,	:	

COMPLAINT

AND NOW, comes Plaintiff, Pennsylvania State Corrections Officers Association, by its attorneys, Freeburn & Hamilton, PC, and files the following Complaint:

1. Plaintiff, Pennsylvania State Corrections Officers Association (hereinafter referred to as "PSCOA"), is an unincorporated association with offices located 2441 North Front Street, Harrisburg, Dauphin County, Pennsylvania 17110.

2. At all times relevant hereto, Roy Pinto is a member of PSCOA, and brings this action as Trustee Ad Litem.

3. Defendant, John A. Miller, is an adult individual who resides at 192 Spruce Street, Indiana, Indiana County, Pennsylvania 15701.

4. Since June 2001, Plaintiff, PSCOA, has been the exclusive representative for collective bargaining purposes for correctional officers employed by the Commonwealth of Pennsylvania's Department of Corrections.

JX-6

5. At all times relevant hereto, Plaintiff employed individuals to serve as its executive officers, business agents and administrative personnel.

6. At all times relevant hereto, Plaintiff employed Defendant, John A. Miller, as a business agent.

7. At all times relevant hereto, business agents employed by Plaintiff were provided reimbursement for use of their own vehicles while on PSCOA business at the rate established by the Internal Revenue Service.

8. On or about July 20, 2010, Roy Pinto was sworn in as President of PSCOA.

9. After Mr. Pinto was sworn into office, Plaintiff hired a certified public accounting firm to complete a forensic investigation as to whether certain former business agents and former executive officers, including Defendant, submitted and were reimbursed excessive mileage expenses.

10. The forensic investigation found that Defendant submitted claims for mileage reimbursement expenses of 163,855 miles for the period of July 1, 2007 through June 30, 2010, but was only able to authenticate 69,759 miles for this period.

11. Defendant received more than $86,807.00 in reimbursement for 163,855 miles.

12. Plaintiff believes that Defendant was entitled to mileage reimbursement in the amount of $36,919.00 for 69,759 miles for the period of July 1, 2007 through June 30, 2010.

13. Based upon the foregoing, Plaintiff reasonably believes that Defendant, John A. Miller received excess mileage reimbursements totaling $49,888.00 for the period of July 1, 2007 through June 30, 2010.

COUNT I - FRAUD, DECEIT AND INTENTIONAL MISREPRESENTATION

PSCOA, Plaintiff v. John A. Miller, Defendant

14. Paragraphs 1-13 are incorporated herein by reference thereto.

15. Plaintiff reasonably believes that Defendant, John A. Miller, made false or fraudulent representations to Plaintiff, PSCOA, in regards to the number of reimbursable miles he traveled for PSCOA business purposes for the period of July 1, 2007 through June 30, 2010.

16. Defendant claimed 163,855 miles for mileage reimbursement for the period of July 1, 2007 through June 30, 2010, but only 69,759 miles could be authenticated by the forensic investigation.

17. When Defendant made these representations, he knew them to be false, and these representations were made by Defendant with the intent to defraud and deceive Plaintiff and with the intent to induce Plaintiff to act in the manner herein alleged.

18. Plaintiff reasonably relied upon Defendant's fraudulent representations as to his entitled to mileage reimbursement.

19. As a result of Defendant's fraud, deceit and intentional misrepresentations, Plaintiff has been damaged by paying excess mileage reimbursements to Defendant, John A. Miller, in the sum of $49,888.00.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, jointly and severally, in an amount in the amount of FORTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-EIGHT & 00/100 ($49,888.00) DOLLARS plus reasonable interest and costs.

COUNT II – CONVERSION

PSCOA, Plaintiff v. John A. Miller, Defendant

20. Paragraphs 1-19 are incorporated herein by reference thereto.

21. On information and belief, Defendant, John A. Miller, received and does not intend to return the $49,888.00 that he unlawfully or improperly obtained from Plaintiff, PSCOA, for the period of July 1, 2007 through June 30, 2010.

22. Defendant knew that the property rightfully and legally belonged to Plaintiff, but has converted the same to his own use and has refused and continues to refuse to return the $49,888.00 to the custody and control of Plaintiff.

23. Defendant is exercising unlawful control and possession over the $49,888.00 despite having no right, title or equitable claim to the ownership and/or possession of the $49,888.00.

24. On information and belief, Defendant intends to deprive Plaintiff of the $49,888.00.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, John A. Miller, jointly and severally, in an amount in the amount of FORTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-EIGHT & 00/100 ($49,888.00) DOLLARS plus reasonable interest and costs.

COUNT III - UNJUST ENRICHMENT

PSCOA, Plaintiff v. John A. Miller, Defendant

25. Paragraphs 1-24 are incorporated herein by reference thereto.

26. Defendant, John A. Miller, was unjustly enriched at Plaintiff's expense in the amount of $49,888.00 for the acts alleged herein.

27. Defendant has appreciated from the benefit of the $49,888.00.

28. It would be inequitable and unconscionable to allow Defendant, John A. Miller, to accept and retain this benefit.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, John A. Miller, jointly and severally, in an amount in the amount of FORTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-EIGHT & 00/100 ($49,888.00) DOLLARS plus reasonable interest and costs.

COUNT IV – BREACH OF FIDUCIARY DUTY

PSCOA, Plaintiff v. John A. Miller, Defendant

29. Paragraphs 1-28 are incorporated herein by reference thereto.

30. Defendant, John A. Miller, was employed as a business agent by Plaintiff, PSCOA, throughout the period of July 1, 2007 through June 30, 2010.

31. Defendant's acts alleged herein, including the fraudulent representations of reimbursable miles, were detrimental to Plaintiff.

32. At the time of Defendant's misrepresentations, Defendant owed a fiduciary duty to Plaintiff to act in the best interests of the organization and its members.

33. Defendant knowingly violated the duties of trust and loyalty owed to the organization and its members.

34. The alleged acts were undertaken by Defendant willfully and maliciously, in bad faith, and for the purpose of injuring Plaintiff.

WHEREFORE, Plaintiff, PSCOA, demands judgment in its favor and against Defendant, John A. Miller, jointly and severally, in an amount in the amount of FORTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-EIGHT & 00/100 ($49,888.00) DOLLARS plus reasonable interest and costs.

Respectfully Submitted,

FREEBURN & HAMILTON, PC

By: _____

Richard E. Freeburn, Esquire
I.D. No. 30965
2040 Linglestown Rd., Ste. 300
Harrisburg, PA 17110
(717) 671-1955

Date: 08/07/12

Counsel for Plaintiff

VERIFICATION

I hereby verify that the statements in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: 7/13/12

Roy Pinto

Roy Pinto

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Plaintiff's Complaint** was duly served on the 7th day of August, 2012, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

John A. Miller
192 Spruce Street
Indiana PA 15701

BY: Georgianne J. Hess

Georgianne J. Hess, Assistant to
Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
2040 Linglestown Road, Ste. 300
Harrisburg, PA 17110
(717) 671-1955

Dated: 08/07/12

Attorney for Plaintiffs

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	)	Cases 04-CA-037648
	)	04-CA-037649 *and*
and	)	04-CA-037652
BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	)	

EXHIBIT NO. JX7 RECEIVED ✓ REJECTED ____
CASE NO. ____ CASE NAME PSCOA
NO. OF PAGES 3 DATE 4/14/14 REPORTER EGM

STIPULATION OF FACTS

Pennsylvania Corrections Officers Association ("PSCOA" or "Respondent") and Counsel for the General Counsel present the following stipulation of facts:

1. Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke all received letters dated August 20, 2010, directing them to return to their original state correctional institutions to resume their employment there. Work was available to those individuals at their original state correctional institutions

2. The biweekly earnings of Dyches, Hood, Hurd, Miller and Parke at the time of their separations from PSCOA were, respectively, $3,099.48, $3,194.52, $3,145.52, $2860.57 and $3,158.12.

3. The backpay calculations for Dyches, Hood, Hurd and Miller set forth in the revised Compliance Specification are properly calculated. PSCOA/Respondent disputes the Specification's calculation as to Parke.

JX 7

4. The parties' stipulation to the manner in which these backpay calculations have been done is not a stipulation as to whether or not the union was defunct before September 28, 2012 now whether or not impasse was reached in April 2012.

5. On April 4, 2012, representatives of the PSCOA met with Larry Sonnie, President of BARSUEA, to engage in bargaining pursuant to the National Labor Relations Board's decision of March 23, 2012. This was the parties' only face to face bargaining meeting.

6. PSCOA sent a letter dated April 4, 2012, to Sonnie detailing PSCOA's offer. The letter is appended hereto as Joint Exhibit (JX) 1.

7. BARSUEA Vice President Lawrence Blackwell mailed a counteroffer on April 10, 2012, to PSCOA. The letter is appended hereto as JX 2.

8. By letter to Blackwell dated April 11, 2012, PSCOA rejected the counteroffer and declared impasse. The letter is appended hereto as JX 3.

9. On April 11, PSCOA and BARSUEA reached an impasse in bargaining.

10. After April 11, 2012, PSCOA did not attempt to contact BARSUEA to engage in further bargaining over the effects of the discharges of Dyches, Hood, Hurd, Miller, and Parke.

11. After April 11, 2012, neither the BARSUEA President nor any member of its Executive Committee contacted PSCOA to engage in further bargaining over the effects of the discharges of Dyches, Hood, Hurd, Miller, and Parke.

12. On August 7, 2012, PSCOA filed a lawsuit against Dyches in the Dauphin County Court of Common Pleas. The Complaint is appended hereto as JX 4.

13. On August 7, 2012, PSCOA filed a lawsuit against Hurd in the Dauphin County Court of Common Pleas. The Complaint is appended hereto as JX 5.

14. On August 7, 2012, PSCOA filed a lawsuit against Miller in the Dauphin County Court of Common Pleas. The Complaint is appended hereto as JX 6.

15. PSCOA's lawsuits against Dyches, Hurd, and Miller are still pending.

16. PSCOA did not file a lawsuit against Parke. PSCOA has not accused Parke of fraudulent mileage reimbursements.

Respectfully submitted,

By: _____

Michael McAuliffe Miller
Attorney I.D. No. 78507
ECKERT SEAMANS CHERIN & MELLOTT, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-7174
Attorney for PSCOA

By: _____

David G. Rodriguez
Counsel for the General Counsel
National Labor Relations Board
Region Four
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106
(215) 597-6037

Dated: April 14, 2014

JD–24–14
Harrisburg, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PENNYSLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

and

BUSINESS AGENTS REPRESENTING STATE
UNION EMPLOYEES ASSOCIATION

Cases 04–CA–37648
04–CA–37649
04–CA–37652

David Rodriguez, Esq.
for the General Counsel.
Michael McAuliffe Miller, Esq.
(Eckert, Seamans, Cherin & Mellott)
for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. The hearing in this compliance matter was held on April 14, 2014, in Philadelphia, Pennsylvania. The compliance specification, as revised, sets forth alleged monies due former employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke (hereafter the claimants) under the *Transmarine*[1] backpay remedy ordered in the Board's underlying decision in this case reported at 358 NLRB No. 19 (March 23, 2012). The compliance specification states that the Board's order directed Respondent to bargain with the Charging Party Union (hereafter the Union or BARSUEA) over the effects of its decision to discharge[2] the claimants and to pay them normal wages they would have earned commencing five (5) days after the issuance of the order until the earliest of the following conditions:

> (1) the date that Respondent bargained to agreement with the Union over the effects of the layoffs; (2) the date a bona fide impasse in effects bargaining occurred; (3) the failure of the Union to request bargaining within five business days after receipt of the Board's Order, or to commence negotiations within five business days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in

[1] *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).
[2] The specification erroneously refers to the terminations as layoffs.

> good faith. The Board further ordered that, in no event, would the sum paid to any of the claimants exceed the amount that any of them would have earned as wages from the date of their layoffs to the time they each secured equivalent employment; nor would the sum paid to the complaints be less than they would have earned for a two week period as their normal wages when they last were in Respondent's employ, plus interest.

The compliance specification lists the claimants' bi-weekly earnings at the time of their discharges as follows: Dyches—$3,099.48; Hood—$3,194.52; Hurd—$3,145.25; Miller—$2860.57; and Parke—$3,158.12. The specification also alleged that the claimants were on leaves of absence from their corrections officers jobs with the Commonwealth of Pennsylvania (the Commonwealth) while they were employed by Respondent. By agreement with the Commonwealth, a portion of their pay was paid by the Commonwealth and the remainder was paid directly by Respondent, but Respondent reimbursed the Commonwealth for the portion it paid. Their bi-weekly earnings set forth above include both portions of pay.

The compliance specification further alleges that none of the conditions specified in the Board order occurred and that the back pay period ran 26 weeks from March 28, 2012 (5 days after the Board order issued) until September 28, 2012, the approximate date on which the Union that represented the claimants became defunct and was no longer able to bargain. As revised at the hearing, the specification sets forth the gross backpay amounts for each claimant, less interim earnings, resulting in a net back pay amount for each. The total amounts to some $57,000, plus interest.[3]

Respondent filed an answer alleging that it had lawfully bargained to an impasse over the amounts due, thus satisfying one of the key requirements of the Board's order. It also asserted that the Union was "essentially defunct and disclaimed any bargaining obligation prior to September 28, 2012." The answer admitted the bi-weekly earnings of the claimants set forth in the compliance specification. It also admitted the portion of the specification set forth above dealing with the pay of the claimants while they were on leaves of absence from their former jobs. With specific reference to claimant Parke, the answer alleged that he voluntarily declined to return to his former position as a correctional officer for the Commonwealth of Pennsylvania, which he originally left to become an employee of Respondent, even though that opportunity was available to him, as it was to other claimants who returned to their former positions. The answer thus asserts that any backpay for him should be cut off as of the date he declined to return to his former position.

The parties filed post-hearing briefs which I have read and considered.

[3] The parties stipulated that the back pay calculations for Dyches, Hood, Hurd and Miller set forth in the revised compliance specification are properly calculated. Respondent disputes the calculation as to Parke because it contends that Respondent did not mitigate his back pay liability when he declined to return to his former correction officer's position. Respondent, however, agrees that, if its contention as to Parke, is rejected, the back pay calculation for Parke is accurate.

The Facts

Respondent represents some 11,000 corrections officers employed by the Commonwealth of Pennsylvania. Respondent employs some 18 individuals who were represented by the Union. Some of those individuals, including claimants, were former corrections officers. When they were employed by Respondent, the claimants were on leaves of absences from their corrections officer jobs. By agreement with the Commonwealth, a portion of their pay was paid by the Commonwealth and the remainder was paid directly by Respondent, but Respondent reimbursed the Commonwealth for the portion it paid. The claimants also accrued pension and leave credits from the Commonwealth during their employment with Respondent. Tr. 35-36, 64-65.

After their discharge by Respondent, all the claimants received letters, dated August 20, 2010, directing them to return to their original correctional institutions to resume their employment there. Work was available for those individuals at their original correctional institutions. Jt. Exh. 7. Parke was the only claimant who did not return to his former position as a corrections officer. He voluntarily retired from his former position and accepted either a pension or a lump sum settlement both from the Commonwealth and from Respondent. He did, however, obtain other employment in another industry.[4]

Parke testified that when joined Respondent he left his corrections officer position in Houtzdale, Pennsylvania, and moved to Mechanicsburg, Pennsylvania, nearer to his work site with Respondent in Harrisburg. That was some two and a half hours drive away from Houtzdale. He also testified that, before deciding to retire, he did not request a transfer from his former corrections position to one closer to his home than his work site at Respondent. Such transfers are readily available and permitted under the applicable collective bargaining agreement. Tr. 47-58.

On April 4, 2012, representatives of Respondent met with Larry Sonnie, the president of the Union, to engage in effects bargaining pursuant to the Board's decision of March 23, 2012. This was the parties' only face to face bargaining meeting. This meeting was initiated by Respondent, whose representative contacted Sonnie. The Union apparently had no knowledge of the Board's decision and had not attempted to initiate effects bargaining. Tr. 19.

Respondent's position was set forth in a letter to Sonnie, dated April 4. It offered to pay the claimants two weeks pay without deductions for interim earnings, less one week's pay claimants received at the time of their discharge for time they did not work for Respondent. Those amounts would then, according to Respondent, be considered a credit against monies allegedly received by claimants for improper mileage reimbursements during their employment. Respondent has sued for the return of such mileage reimbursements in civil lawsuits against Claimants Dyches, Hurd and Miller. Those lawsuits are still pending.[5]

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[4] The parties agree that, under the collective bargaining agreement between Respondent and the Union, as well as pursuant to past practice, claimants were entitled to return to their former positions as corrections officers. Tr. 15-16.

[5] Respondent's claims of invalid mileage reimbursement included an amount for Hood, but, according to the stipulation of the parties, no lawsuit was filed against Hood to recover the mileage amounts he apparently owed. The parties also stipulated that Parke was not accused of collecting invalid mileage reimbursements.

Union Vice President Lawrence Blackwell mailed a counteroffer to Respondent on April 10, 2012. The counteroffer was as follows: 2 weeks' severance pay and all unused vacation or leave paid back for Dyches, Hurd, Miller and Parke; and 2 weeks' severance pay, 70 vacation days, unpaid phone charges and 6 weeks' of mileage reimbursement for Hood. Blackwell also rejected the set off for mileage reimbursement because he contended that there was no proof that it was invalidly claimed.

On April 11, 2012, Respondent rejected the Union's counteroffer, giving reasons in support of its position. It also stated that impasse in bargaining had occurred. The parties stipulated that Respondent and the Union reached an impasse on April 11, 2012. It was also stipulated that neither party made any other effort to contact the other to engage in further effects bargaining.[6]

Sonnie and Blackwell retained their positions in the Union until September 28, 2012, when all parties agree that the Union became defunct. Sonnie testified that he tried to reach out to the claimants to determine their positions on the Respondent's April 4 offer, but none of them returned his calls. He then turned the matter over to Blackwell, who apparently was able to make contact with at least one of the claimants. Tr. 26, 28, 39-40, 83. According to Sonnie, between April 2012 and September 2012, the Union was "in a holding pattern" because a petition to decertify the Union was filed with the Board's Philadelphia regional office. He testified that "nobody wanted to do anything because we didn't know whether we were going to be there or not." Tr. 37.

A petition to decertify the Union was filed on January 26, 2012, with the Region 4 of the Board in Philadelphia. Attached to the petition was a statement, signed by 11 of the 18 employees in the unit represented by the Union, that the signers no longer wanted the Union to represent them. R. Exh. 5. On March 7, 2012, while the underlying case was still pending before the Board, the regional director for Region 4 dismissed the decertification petition because of the then-existing 2010 bargaining agreement whose validity was at issue in the underlying case, "subject to reinstatement, if appropriate," upon conclusion of the underlying case. In fact, in the Board's March 23, 2012 decision, the 2010 contract was declared invalid. R. Exh. 7. But apparently no one asked for reinstatement of the decertification petition and no election was held. Furthermore, as indicated above, the Respondent dealt with the Union in effects bargaining in April 2012.

Discussion and Analysis

There are several issues in this case: (1) Did the back pay period end on April 11, 2012, when the parties were admittedly at impasse in their effects bargaining, as Respondent alleges, or September 28, 2012, when the Union became defunct, as the General Counsel alleges? The answer to that question turns on how one views Respondent's conditions for agreement—that its offer of 2 weeks' back pay be set off by an earlier week's pay to the claimants that was unearned and by any amounts due to Respondent because of improper mileage reimbursements to

[6] Respondent conceded that its position on mileage reimbursement, at least, was insisted upon to the point of impasse. Tr. 16-17.

claimants. The General Counsel asserts that these conditions were not mandatory subjects of bargaining. Respondent says that they were. (2) If Respondent's contention on the above question fails, did the back pay period end at some point before September 28, as Respondent contends, because the Union was essentially incapable of bargaining, mainly because of the filing of a decertification petition, which was not promptly acted upon by the regional office? (3) As to Parke, was Respondent's back pay liability tolled because Parke, alone among the claimants, voluntarily declined to return to his former position as a corrections officer, as Respondent contends?

It is settled that a lawful impasse cannot exist if a party insists that any agreement include a non-mandatory subject of bargaining—that is, a subject that does not "vitally affect" wages, hours or terms and conditions of employment. See *Cushman & Wakefield, Inc.,* 360 NLRB No. 10 (2013), slip op. 4, and cases there cited.

Here, it is clear that the parties were at impasse in bargaining over the effects of the decision to discharge the claimants. It is Respondent's position that the Board's order in the underlying case tolled back pay at the point that the parties were at lawful impasse. But it is also clear that the Board's order required a minimum of two weeks of back pay. Respondent offered two weeks of back pay, but required that there be a set off against that amount of an earlier payment of one week of pay that allegedly had been unearned and of whatever it alleged was improper mileage reimbursement to some claimants during their employment. These conditions were contrary to the minimum back pay remedy in the Board's order. Insistence to impasse on a position that derogates from a specific Board remedy amounts, in my view, to insistence on an illegal subject of bargaining. See Chapter 16 VI. B. of *The Developing Labor Law* (Sixth Edition, 2012). At the least, such a position does not constitute a mandatory subject, about which the other party must bargain. Accordingly, I find that the impasse of April 11 was not a valid impasse and the back pay period continued to run thereafter.[7]

Nor do I find that the Union was incapable of bargaining at any point before September 28, 2012, when it became defunct. Clearly, the Union was operative in April 2012 when Respondent engaged with it in effects bargaining. Thus, any contention that the decertification petition, which was filed in January 2012, made the Union incapable of bargaining must fail. No election was held and thus the Union was still a viable entity, at least insofar as carrying out the bargaining contemplated in the Board's order in the underlying case. Moreover, Respondent negotiated with the Union over effects bargaining, thus waiving any right to challenge its representative status. See *Fallbrook Hospital,* 360 NLRB No. 73 (2014), slip op. 1 (employer waived its right to challenge validity of a union's certification by entering into negotiations with that union).[8]

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[7] The briefs of the parties on this issue seem to joust on a separate point—whether seeking a set off for mileage reimbursement, particularly in light of pending lawsuits against some but not all of the claimants, amounts to a mandatory or permissive subject of bargaining. In view of my rationale for finding no lawful impasse, set forth above, I need not address this point. But the General Counsel seems to have the better of the argument since Respondent's set off is comparable to conditioning agreement on a general release of claims, which is a permissive, not a mandatory, subject of bargaining. See *Borden, Inc.*, 279 NLRB 396, 398-399 (1986).

[8] As the General Counsel points out (Br. 15), the decertification petition was properly dismissed by the region pending the outcome of the underlying case. The petition was not reinstated thereafter, and

It is true that neither side requested a return to the bargaining table after April 11. But that was because Respondent poisoned the well by insisting on improper conditions that caused an impasse. Had it not wrongfully insisted on those conditions, contrary to the Board's order, the bargaining might well have gone forward. Thus, Respondent, like any wrongdoer, cannot profit from any lack of bargaining from mid-April until the September 2012 date the Union became defunct. I therefore reject the Respondent's position and agree with the General Counsel's position that the back pay period runs until September 28, 2012.

The above applies to the claims of Dyches, Hood, Hurd and Miller. Parke is different because I must consider the separate allegation that he failed to mitigate Respondent's back pay liability by not returning to his former employment with the Commonwealth of Pennsylvania, as did the other claimants. See *St. George Warehouse*, 351 NLRB 961, 963 (2007).

I agree with Respondent that Parke failed to mitigate the back pay obligation to him. He voluntarily retired from his former position and refused even to consider asking for a transfer to a position nearer his home that was likely available. I reject the General Counsel's attempt (Br. 18-20) to treat Parke's former corrections officer position as the usual kind of interim employment. That job was intrinsically intertwined with his position with Respondent. Parke's job as assistant grievance manager for Respondent was based to a great degree on his former experience as a corrections officer since Respondent represents corrections officers. Moreover, as indicated above, Parke was simply on leave of absence from his former position. Indeed, part of his compensation from Respondent was paid by the Commonwealth. He also accrued pension and leave credits from the Commonwealth during his employment with Respondent. And he had an absolute right to return to his former position after his leave of absence was over. To overlook these ties to his former position in determining the mitigation issue would provide Parke with a windfall he does not deserve. Thus, in the particular circumstances of this case, I find that Parke "willfully incurred" a loss by his "clearly unjustified" refusal to return to his former employment. *St. George Warehouse*, above, quoting from applicable authorities.

I do not believe, however, that Parke is entitled to no back pay, as Respondent seems to contend. He is entitled to the minimum 2 weeks of back pay set forth in the Board's order in the underlying case.

On these findings and conclusions, and on the entire record, I issue the following recommended[9]

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could not have been until after the Respondent's violation (failure to engage in effects bargaining) was appropriately remedied.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, its officers, agents, successors and assigns, shall pay the claimants the amounts specified after their names below, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws.

Lee Dyches	$9,646.25
Shawn Hood	$3,235.89
Patricia Hurd	$11,755.23
John Miller	$8,243.08
Bill Parke	$3,158.12

Dated, Washington, D.C., May 23, 2014

Robert A. Giannasi
Administrative Law Judge

BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

In the Matter of:	:	
	:	
PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION,	:	Case Nos. 04-CA-037648 04-CA-037649 and 04-CA-037652
Respondent	:	
and	:	
	:	
BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION,	:	
Charging Party	:	

BRIEF OF THE PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION FILED IN REPLY TO THE EXCEPTIONS FILED BY THE OFFICE OF THE GENERAL COUNSEL

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I. INTRODUCTION

The Pennsylvania State Association of Correctional Officers ("PSCOA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, and pursuant to Section 102.42 of the Board's Rules and Regulations, Series 8, as amended, hereby files its brief[1] in response the exceptions previously filed in this matter by the Office of the General Counsel to the Decision of the Chief Administrative Law Judge Robert Giannasi on May 23, 2014.

II. ISSUES

The issue framed in the exceptions is whether the Administrative Law Judge erred when he correctly determined that Bill Parke failed to mitigate his damages since he made a choice not to return to the correctional officer position from which he previously came. The ALJ did not err in finding that Bill Parke failed to mitigate his damages since he made a choice not to return to the correctional officer position from which he previously came.

III. FACTS

The Pennsylvania State Correctional Officers Association is an unincorporated Pennsylvania association with an office in Harrisburg, Pennsylvania. *Pennsylvania State Association of Correctional Officers and Business Agents Representing State Union Employees Association*, 358 NLRB No. 19 at 3 (2012)("PSCOA"). PSCOA represents employees in bargaining units within the Commonwealth of Pennsylvania including correctional officers employed in the Commonwealth of Pennsylvania's statewide prison system. *PSCOA*, *supra* at 3.

Since June 2001, PSCOA has represented some 11,000 correctional officers at 28 facilities in Pennsylvania's prison system. *PSCOA*, *supra* at 3. It is led by a 13-member

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1 References to the official transcript in this proceeding shall be as "(TR___)". References to Joint exhibits, Employer exhibits and Petitioner exhibits shall be made as "(Jx __)", "(Rx__)" and "(Px__)" respectively.

Executive Board, including a President and other officers, and it operates under a written constitution that sets forth the responsibilities and duties of its officers and governing executive board. PSCOA, *supra* at 3.

As a consequence of this representational activity, PSCOA employs business agents. Those business agents are culled from the ranks of the Commonwealth's correctional officers. When a correctional officer is selected as a business agent, they are provided leave from their Commonwealth correctional officer position and detailed to PSCOA. *TR* at 52-53. A correctional officer who is selected as a business agent is not guaranteed tenure in his position as a business agent. *TR* at 52-53. As such, a correctional officer who is selected as a business agent has the undisputed right to be automatically reinstated to the correctional officer position with the Commonwealth when his appointment as a PSCOA business agent ends. *TR* at 52-53.

The General Counsel construes these business agents, including Parke, as "former corrections officers." General Counsel's Brief at 3. That is not supported by the evidence. Business agents are—and remain—corrections officers during their appointment as business agents. They are not--and were never--former correctional officers.

A. The Creation Of The Business Agents Representing State Union Employees Association ("BARSUEA").

As the Administrative Law Judge found in the initial hearing in this matter, on June 25, 2010, a nascent union, the Business Agents Representing State Union Employees Association ("BARSUEA") filed an election petition with the Board's regional office in Philadelphia seeking to represent PSCOA's roughly 20 business agents and staff employees. PSCOA, *supra* at 4. On July 1, 2010, PSCOA and BARSUEA entered into a stipulated election agreement, approved by the region, setting an election for July 12, 2010, in the following unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards and supervisors.

PSCOA, *supra* at 4.

The election was held as scheduled and BARSUEA won. PSCOA, *supra* at 4. On July 21, 2010, the Board certified BARSUEA as the official bargaining representative of PSCOA's employees. PSCOA, *supra* at 4.

Between the election and the Board's certification, former President Donald McNany, on behalf of PSCOA, and Claimant Shawn Hood, on behalf of BARSUEA, engaged in three negotiating sessions, the last of which was to go over the language of and sign a final collective bargaining agreement. PSCOA, *supra* at 4. At the last session, on July 19, McNany and Hood signed the agreement, which had a 5-year term and contained new and generous severance and other benefits (the "July 19th Agreement"). PSCOA, *supra* at 4.

B. PSCOA's Decision To Discharge The Claimants.

Jason Bloom, who was re-elected to PSCOA's Executive Board on the Pinto slate as Western Regional Vice-President in June 2010, sent a letter to all 13 business agents of PSCOA asking each of them to submit a letter of interest to be considered for a continued business agent position by the end of the day on July 20, 2010. PSCOA, *supra* at 4. The letter stated that those who were not interested in remaining as business agents should return PSCOA's property in their possession and that those who wanted to remain would be scheduled for interviews. PSCOA, *supra* at 4.

As a result of that process, Claimants in the instant action, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke, all received letters dated August 20, 2010, directing them to return to their original state correctional institutions to resume their employment there.

As set forth above, the Parties have agreed that work was available to those individuals at their original state correctional institutions.

C. Bill Parke Does Not Return To The Correctional Facility From Which He Came.

All of the Claimants in this matter save for one, Bill Parke, returned to the correctional officer positions that they held before they were appointed to the position of business agents for PSCOA. Instead of returning to his previous position, Mr. Parke chose to retire from the Commonwealth and PSCOA in August 2010 immediately after he was told to report to work at his former correctional facility.

Mr. Parke was hired by PSCOA as Assistant Grievance Manager and served in that capacity from May 2002 through August 2010. *TR* at 42. Prior to his hiring by PSCOA, Mr. Parke served as a Correctional Officer II from 1996 through 2002 at the State Correctional Facility located at Houtzdale, Clearfield County, Pennsylvania ("SCI-Houtzdale"). *TR* at 44. When Mr. Parke was hired by PSCOA as Assistant Grievance Manager, he moved from Houtzdale, Clearfield County, to Mechanicsburg, Cumberland County, which was closer to PSCOA headquarters. *TR* at 44-45.

Mr. Parke admitted that his appointment with PSCOA was not a tenured appointment and that he had no continued expectation of employment with PSCOA. *TR* at 52-53. Mr. Parke agreed that he knew when he took the PSCOA position in 2002 that he could be separated from PSCOA and returned to his original correctional facility, SCI-Houtzdale. *TR* at 53.

Mr. Parke admitted—as has the General Counsel—that he possessed the right to return to his Correctional Officer II position at SCI-Houtzdale when he received the August 20, 2010 letter directing him to return to his original state correctional institutions to resume his employment there. In addition, Mr. Parke admitted that he knew he also had the right to ask for

a transfer from SCI-Houtzdale to SCI-Camp Hill, which was a correctional facility which was much closer to his rented home in Mechanicsburg, Pennsylvania. *TR* at 54-55. Mr. Parke never sought a transfer. *TR* at 55.

Mr. Parke instead chose to retire from the Commonwealth and from PSCOA in August of 2010 after he received the letter directing him to return to his original state correctional institution to resume his employment there. *TR* at 56. Following his decision to retire from the Commonwealth and from PSCOA in August of 2010, Mr. Parke worked at a nursing home, the Bridges at Bent Creek, from August to November 2010. *TR* at 56. He was out of work for about 3 ½ weeks because of a medical condition and was shifted to another position at the Bridges at Bent Creek until April of 2011. *TR* at 56. Following April 2011, Mr. Parke was hired by the Holy Spirit Health System. *TR* at 56.

IV. ARGUMENT

A. THE ALJ CORRECTLY FOUND THAT CLAIMANT BILL PARKE FAILED TO MITIGATE HIS DAMAGES SINCE HE MADE A CHOICE NOT TO RETURN TO THE CORRECTIONAL OFFICER POSITION FROM WHICH HE PREVIOUSLY CAME.

The record is abundantly clear that Claimant Bill Parke had work available to him as a correctional officer. As such, Mr. Parke's failure to accept reinstatement to that position necessarily constitutes a willful failure to seek reinstatement/equivalent work which should toll any make whole remedy should, arguendo, the ALJ find that impasse was not properly reached.

"Longstanding remedial principles establish that backpay is not available to a discriminatee who has failed to seek interim employment and thus incurred a willful loss of earnings." *St. George Warehouse*, 351 NLRB at 963. Thus, "[a] discriminatee must make reasonable efforts during the backpay period to seek and hold interim employment. This is known as the discriminatee's obligation to mitigate. A discriminatee is not due backpay for any

period within the backpay period during which it is determined that he or she failed to make a reasonable effort to mitigate[.]" *Id.*; *quoting*, NLRB CASE HANDLING MANUAL (PART THREE) Compliance Section 10558.1).

To assert, as a defense to backpay liability, a Respondent can meet its burden of proof by presenting evidence that, during the backpay period, there were sources of actual or potential employment that the claimant failed to explore, and must show if, where, and when the discriminatee would have been hired had they applied. *McLoughlin Mfg. Corp.*, 219 NLRB 920, 922 (1975); *Isaac & Vinson Security Services*, 208 NLRB 47, 52 (1973); *Champa Linen Service Co.*, 222 NLRB 940, 942 (1976).

A discriminatee, depending on his or her circumstances, is required to seek substantially equivalent work, at least initially. For example, in *Mastro Plastics Corp.*, 136 NLRB 347 (1962), the Board held in the case of employee Pasculli, that her backpay was cut off because she only sought part-time employment and therefore did not put herself in a labor market comparable to that of Mastro. In *EDP Medical Computer Systems*, 304 NLRB 627, 636 (1991), the Board denied a backpay claim on the grounds that the discriminatee did not make an adequate search for similar, or at least similarly paid work. *See also, Knickerbocker Plastic Co.*, 132 NLRB 1209 (1961) (in relation to a discriminatee named Anthony Pavani); *NHE/Freeway, Inc.*, 218 NLRB 259 (1975) (Employee's complete failure, aside from her one early approach to a health facility, to pursue employment as a nurse's aide was in essence a willful loss of earnings standing between her and her right to back pay.). Moreover, A good-faith offer of reinstatement, whether received by the employee or not, tolls backpay. *Knickerbocker Plastic Co.*, 132 NLRB 1209 (1961); *The Rollash Corporation*, 133 NLRB 464 (1961).

Mr. Parke admitted that his appointment with PSCOA was not a tenured appointment and that he had no continued expectation of employment with PSCOA. *TR* at 52-53. Mr. Parke agreed that he knew when he took the PSCOA position in 2002 that he could be separated from PSCOA and returned to his original correctional facility, SCI-Houtzdale. *TR* at 53.

Mr. Parke admitted—as has the General Counsel—that he possessed the right to be reinstated to his Correctional Officer II position at SCI-Houtzdale when he received the August 20, 2010 letter directing him to return to his original state correctional institutions to resume his employment there. *TR* at 16. In addition, Mr. Parke admitted that he knew he also had the right to ask for a transfer from SCI-Houtzdale to SCI-Camp Hill, which was a correctional facility which was much closer to his rented home in Mechanicsburg, Pennsylvania. *TR* at 54-55. Mr. Parke never sought a transfer. *TR* at 55. Mr. Parke instead chose to retire from the Commonwealth and from PSCOA in August of 2010 after he received the letter directing him to return to his original state correctional institutions to resume his employment there. *TR* at 56.

The Office of the General Counsel attempt to shoehorn this case into the traditional mitigation framework by comparing the grievance manager position that Mr. Parke held with the PSCOA and the position of correctional officer to which he was required to return once his appointment was over. That framework is inapplicable here because Mr. Parke never left his position as correctional officer, he was merely appointed---temporarily—to a position with additional duties. *See,* ALJD at 6; 15-30.

The comparison of two jobs is inapposite here, where everyone acknowledges that Mr. Parke remained a correctional officer and was expected to return to that position. *TR* at 35. In fact, as Union President Larry Sonnie admitted during his testimony, Business Agents assigned to PSCOA from their correctional officer positions continue to accrue vacation from the

Commonwealth of Pennsylvania's Department of Corrections while they are serving as appointed Business Agents. *TR* at 35; *see,* ALJD at 6; 15-30. As such, they remain correctional officers at all times because they continue to accrue benefits as correctional officers. Further, there is no basis for Mr. Parke to "decline" a position as a correctional officer as the General Counsel suggests because he *retained* that job during his appointment as a business agent. *See,* ALJD at 6; 15-30.

The General Counsel points to the fact that Mr. Parke adopted two special needs children but that does not explain why he did not return to his waiting position with the Commonwealth. The General Counsel suggests that the decision of the Commonwealth of Pennsylvania not to grant Mr. Parke an eight week leave of absence was a reason justifying Mr. Parke's refusal to return to the correctional officer position was a justification but this was a decision of the Commonwealth of Pennsylvania and not the Respondent, the Pennsylvania State Association of Correctional Officers. *TR* at 54. The decision of the Commonwealth is not chargeable to PSCOA.

The fundamental distinction that the Office of the General Counsel refuses to admit is that the Business Agents' temporary appointment to the position of business agent from the position of correctional officer *never* meant that the Business Agents had *left* their correctional officer positions. They were always correctional officers and were expected to return to that position. In this case, where Mr. Parke chose not to return—when he quit--he incurred a willful loss of earnings. Because actions have consequences, Mr. Parke's decision necessarily reduced his *Transmarine* backpay earnings and the ALJ was correct in so doing.

The fact is that Mr. Parke had available to him a higher paying correctional officer position to which he would have been reinstated had he applied. On this basis alone, the PSCOA

has provided sufficient evidence that Mr. Parke's voluntary decision to eschew reinstatement tolled his eligibility for a backpay remedy. In the alternative, Mr. Parke's decision to leave the Commonwealth for a different position was a voluntary decision and constituted a willful loss of earnings.[2] As such, the backpay award sought by the Region in the Compliance specification with reference to Mr. Parke was properly modified by the ALJ.

V. CONCLUSION

Based on the foregoing, the Pennsylvania State Corrections Officers Association prays that the ALJ's finding be upheld.

Respectfully submitted,

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[2] Certainly, when one measures the comparative wages of the Claimants that accepted reinstatement with the Commonwealth and the lower wages Mr. Parke earned, Mr. Parke should not gain a benefit for refusing reinstatement.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2014, a true and correct copy of the foregoing *Pennsylvania State Corrections Officers Association's Reply Brief to the Exceptions Filed By The Office of the General Counsel* was served via electronic mail upon the following persons:

Lawrence Blackwell, Vice President
Business Agents Representing State Union
Employees Association
106 Locust Street
Beech Creek, PA 16822

Henry R. Protas
NLRB, Region Four
615 Chestnut Street, 7th Floor
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Michael McAuliffe Miller
Attorneys for Pennsylvania State
Corrections Officers Association

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	)	**Cases** 04-CA-037648
	)	04-CA-037649 *and*
and	)	04-CA-037652
	)	
BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION	)	
	)	
Respondent.	)	

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION OF MAY 23, 2014

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{L0560668.1}

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), the Pennsylvania State Corrections Officers Association ("Employer" or "PSCOA") hereby files Exceptions to the Administrative Law Judge's ("ALJ") Decision ("ALJD") issued in the above-captioned matter as follows:

1. To the ALJ's failure to find that that the Board's Order in the underlying case tolled back pay at the point that the parties were at lawful impasse, e.g. on or before April 11, 2012. ALJD at 5; 25-30.

2. To the ALJ's finding that the Board's Order required a minimum of two weeks of back pay but did not permit a set off against that amount of an earlier payment of one week of pay that allegedly had been unearned and of whatever it alleged was improper mileage reimbursement to some claimants during their employment. ALJD at 5; 15-30.

3. To the ALJ's finding that the Respondent's position, which included a set off against that amount of an earlier payment of one week of pay that allegedly had been unearned and of whatever it alleged was improper mileage reimbursement to some claimants during their employment (the ALJ refers to this as the Respondent's "conditions") was contrary to the minimum back pay remedy in the Board's Order. ALJD at 5; 15-30.

4. To the ALJ's finding that the Respondent's alleged "insistence to impasse on a position that derogates from a specific Board remedy amounts, in my view, to insistence on an illegal subject of bargaining." ALJD at 5; 22-25.

5. To the ALJ's reliance on Chapter 16 VI. B. of The Developing Labor Law (Sixth 25 Edition, 2012). ALJD at 5; 22-25.

6. To the ALJ's finding that the Respondent's position does not constitute a mandatory subject about which the other party must bargain. ALJD at 5; 25-26.

7. To the ALJ's finding that the impasse of April 11, 2012 was not a valid impasse and the back pay period continued to run thereafter. ALJD at 5; 25-30.

8. To the ALJ's finding that the Union was not incapable of bargaining at any point before September 28, 2012, when it became defunct. ALJD at 5; 29-30.

9. To the ALJ's finding that simply because the Union was operative in April 2012 when Respondent engaged with it in effects bargaining, that the Union was validly operating after April 2012. ALJD at 5; 30-31.

10. To the ALJ's failure to credit the testimony of the President and Vice President of the Union who indicated that they performed no union activity after April 2012.

11. To the ALJ's finding that any contention that the Decertification Petition, which was filed in January 2012, made the Union incapable of bargaining must fail. ALJD at 5; 30-34.

12. To the ALJ's finding that, since no election was held and thus the Union was still a viable entity, at least insofar as carrying out the bargaining contemplated in the Board's Order in the underlying case. ALJD at 5; 30-34.

13. To the ALJ's finding that, since Respondent negotiated with the Union over effects bargaining, it therefore waived any right to challenge its representative status. ALJD at 5; 35-38.

14. To the ALJ's application of *Cushman & Wakefield, Inc.*, 360 NLRB No. 10 (2013), slip op. 4. ALJD at 5; 10-14.

15. To the conclusions contained in Footnote 8 of the ALJD. ALJD at 5-6; Note 8

16. To the ALJ's application of *Fallbrook Hospital*, 360 NLRB No. 73 (2014), slip op. 1 (employer waived its right to challenge validity of a union's certification by entering into negotiations with that union) to the facts of this case. ALJD at 5; 36-38.

17. To the ALJ's finding that Respondent allegedly poisoned the well by insisting on improper conditions that caused an impasse. ALJD at 6; 1-5.

18. To the ALJ's finding that had [Respondent] not wrongfully insisted on those conditions, contrary to the Board's Order, the bargaining might well have gone forward. ALJD at 6; 4-5.

19. To the ALJ's finding that Respondent, like any wrongdoer, cannot profit from any lack of bargaining from mid-April until the September 2012 date the Union became defunct. ALJD at 6; 5-7.

20. To the ALJ's finding that the back pay period runs until September 28, 2012 with respect to the claims of Dyches, Hood, Hurd and Miller. ALJD at 6; 5-8.

21. To the following remedial provision recommended by the ALJ: "The Respondent, its officers, agents, successors and assigns, shall pay the claimants the amounts specified after their names below, plus interest accrued to the date of payment, as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws." ALJD at 7; 4-10.

22. To the ALJ's recommended Order requiring Respondent to pay Lee Dyches $9,646.25; to pay Shawn Hood $3,235.89; to pay Patricia Hurd $11,755.23; and to pay John Miller $8,243.08. ALJD at 7; 10-14.

DATED: July 3, 2014

Respectfully submitted,

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2014, a true and correct copy of the foregoing *Pennsylvania State Corrections Officers Association's Cross-Exceptions to the Administrative Law Judge's Decision of May 23, 2014* was served via electronic mail upon the following persons:

Lawrence Blackwell, Vice President
Business Agents Representing State Union
Employees Association
106 Locust Street
Beech Creek, PA 16822

Henry R. Protas
NLRB, Region Four
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Philadelphia, PA 19106

Michael McAuliffe Miller
Attorneys for Pennsylvania State
Corrections Officers Association

{L0560668.1}

BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

In the Matter of:	:	
	:	
PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION, *Respondent*	:	Case Nos. 04-CA-037648 04-CA-037649 and 04-CA-037652
and	:	
	:	
BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION, *Charging Party*	:	

BRIEF OF THE PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION IN SUPPORT OF ITS CROSS-EXCEPTIONS

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I. INTRODUCTION

The Pennsylvania State Association of Correctional Officers ("PSCOA"), by its attorneys, Eckert Seamans Cherin & Mellott, LLC, and pursuant to Section 102.42 of the Board's Rules and Regulations, Series 8, as amended, hereby files its brief in support of its cross-exceptions[1] in this matter.

II. ISSUES

The issues raised in these cross-exceptions are as follows: 1) whether the ALJ erred in failing to find that an impasse was reached between PSCOA and members of the Business Agents Representing State Union Employees Association ("BARSUEA") on April 11, 2012 or earlier; and 2) whether the ALJ erred in failing to find that the Region's failure to handle a decertification petition which was properly filed precluded PSCOA from arguing that BARSUEA was defunct prior to April 11, 2012 and cut off PSCOA's bargaining responsibilities.

III. FACTS

The Pennsylvania State Correctional Officers Association is an unincorporated Pennsylvania association with an office in Harrisburg, Pennsylvania. *Pennsylvania State Association of Correctional Officers and Business Agents Representing State Union Employees Association*, 358 NLRB No. 19 at 3 (2012)("PSCOA"). PSCOA represents employees in bargaining units within the Commonwealth of Pennsylvania including correctional officers employed in the Commonwealth of Pennsylvania's statewide prison system. *PSCOA*, *supra* at 3.

Since June 2001, PSCOA has represented some 11,000 correctional officers at 28 facilities in Pennsylvania's prison system. *PSCOA*, *supra* at 3. It is led by a 13-member

[1] References to the official transcript in this proceeding shall be as "(TR___)". References to Joint exhibits, Employer exhibits and Petitioner exhibits shall be made as "(Jx __)", "(Rx__)" and "(Px__)" respectively.

Executive Board, including a President and other officers, and it operates under a written constitution that sets forth the responsibilities and duties of its officers and governing executive board. PSCOA, *supra* at 3.

As a consequence of this representational activity, PSCOA employs business agents. Those business agents are culled from the ranks of the Commonwealth's correctional officers. When a correctional officer is selected as a business agent, they are provided leave from their Commonwealth correctional officer position and detailed to PSCOA. *TR* at 52-53. A correctional officer who is selected as a business agent is not guaranteed tenure in his position as a business agent. *TR* at 52-53. As such, a correctional officer who is selected as a business agent has the undisputed right to be automatically reinstated to the correctional officer position with the Commonwealth when his appointment as a PSCOA business agent ends. *TR* at 52-53.

A. The Creation Of The Business Agents Representing State Union Employees Association ("BARSUEA").

As the Administrative Law Judge found in the initial hearing in this matter, on June 25, 2010, a nascent union, the Business Agents Representing State Union Employees Association ("BARSUEA") filed an election petition with the Board's regional office in Philadelphia seeking to represent PSCOA's roughly 20 business agents and staff employees. PSCOA, *supra* at 4. On July 1, 2010, PSCOA and BARSUEA entered into a stipulated election agreement, approved by the region, setting an election for July 12, 2010, in the following unit:

> All full-time and regular part-time business agents and support staff employed by the Respondent, excluding all other employees, guards and supervisors.
>
> PSCOA, *supra* at 4.

The election was held as scheduled and BARSUEA won. PSCOA, *supra* at 4. On July 21, 2010, the Board certified BARSUEA as the official bargaining representative of PSCOA's employees. PSCOA, *supra* at 4.

Between the election and the Board's certification, former President Donald McNany, on behalf of PSCOA, and Claimant Shawn Hood, on behalf of BARSUEA, engaged in three negotiating sessions, the last of which was to go over the language of and sign a final collective bargaining agreement. PSCOA, *supra* at 4. At the last session, on July 19, McNany and Hood signed the agreement, which had a 5-year term and contained new and generous severance and other benefits (the "July 19th Agreement"). PSCOA, *supra* at 4.

B. PSCOA's Decision To Discharge The Claimants.

Jason Bloom, who was re-elected to PSCOA's Executive Board on the Pinto slate as Western Regional Vice-President in June 2010, sent a letter to all 13 business agents of PSCOA asking each of them to submit a letter of interest to be considered for a continued business agent position by the end of the day on July 20, 2010. PSCOA, *supra* at 4. The letter stated that those who were not interested in remaining as business agents should return PSCOA's property in their possession and that those who wanted to remain would be scheduled for interviews. PSCOA, *supra* at 4.

As a result of that process, Claimants in the instant action, Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke, all received letters dated August 20, 2010, directing them to return to their original state correctional institutions to resume their employment there. As set forth above, the Parties have agreed that work was available to those individuals at their original state correctional institutions.

C. BARSUEA Challenges The Business Agents' Discharge.

On August 23, 2010, BARSUEA filed grievances with PSCOA alleging that it had violated the July 19 collective bargaining agreement by "terminating employees without just cause," failing to pay them "the negotiated severance and unused leave," and failing to bid the vacant positions. PSCOA, *supra* at 5. On August 27, 2010, PSCOA, through its lawyer, sent BARSUEA a letter in response to the grievances. PSCOA, *supra* at 5. The letter stated that PSCOA had just recently learned of the existence of BARSUEA and its July 19 collective bargaining agreement. PSCOA, *supra* at 5. The letter also stated that the agreement was void because McNany had no authority to sign the agreement on behalf of PSCOA since he had been voted out of office and the agreement had not been approved by PSCOA's Executive Board, as required by PSCOA's Constitution. PSCOA, *supra* at 5.

On January 3, 2011, PSCOA entered into a new collective bargaining agreement with BARSUEA. PSCOA, *supra* at 5. That agreement, which ran for a term of 1 year and dispensed with the lucrative severance and other benefits in the July 19 agreement, was signed by President Pinto and a representative of BARSUEA. PSCOA, *supra* at 5. Unlike the July 19 agreement, the new agreement was approved by PSCOA's Executive Board. PSCOA, *supra* at 5.

D. A Decertification Petition Is Filed With Region Four.

In January 2012, following the decision of the ALJ but before the Board's Decision and Order, a petition to decertify BARSUEA was filed with Region 4 by Shawn Smith, a member of BARSUEA. *See*, R-5; Tr 70. The petition averred that BARSUEA had 18 members and the petition contained 11 signatures which is in excess of the 30% required to bring the petition before the Board for processing. *Id.*

The Region declined to process the petition but instead issued a letter to Mr. Smith indicating that the Region would wait for a decision by the Board on the issue of whether or not the July 19 collective bargaining agreement was valid. *See*, R-7. If the July 19 collective bargaining agreement was valid, the Board reasoned, then its validity would act as a bar to an election for the following three years. *See*, R-7. The Region told Mr. Smith that it was "dismissing the petition, subject to reinstatement, if appropriate, upon conclusion of the unfair labor practice proceedings." *See*, R-7.

Fourteen days after the Board's letter, the unfair labor practice proceedings *did* conclude when the Board issued a Decision and Order on March 23, 2012, which found that the July 19 Agreement was void. Despite that specific finding, the Region never reinstated the petition for decertification although a determination of whether or not BARSUEA still retained sufficient support in January 2012 would have made a material difference to the issue of whether PSCOA had a duty to bargain over the impact of dismissing the Claimants.

E. The Board Voids BARSUEA's Agreement And Orders PSCOA To Bargain Over Effects.

Following a hearing, both this ALJ and the Board found that the July 19 Agreement was void and that PSCOA did not violate the Act when it made the decision not to retain Claimants Hood, Hurd, Miller and Parke as business agents.

The Board, however, did affirm the ALJ's finding that PSCOA violated Sections 8(a)(5) and (1) by failing to bargain over the effects of the decision to discharge the business agents. In the words of the ALJ's decision:

> Although Respondent need not bargain over the decision to discharge the business agents, it is required to bargain over its effects. I understand that the business agents returned to their former jobs as corrections officers. Their losses thus may be minimal. But there may be severance pay and other accrued, but unpaid, benefits, such as vacation or sick pay, that could be involved in effects bargaining. Any severance pay due the business agents in this case would be subject to the

> bargaining process and Respondent is not required to agree to anything, provided it bargains in good faith to impasse on the issue. Moreover, the typical remedy for effects bargaining, under the Board's order in Transmarine Navigation Corp., 170 NLRB 389 (1968), sets a floor of 2 weeks backpay, a not unreasonable severance package, in view of the bargaining violation I have found.

PSCOA, *supra* at 8.

The ALJ's decision of March 17, 2011 was affirmed by the Board in a Decision and Order issued on March 23, 2012 which, in pertinent part, ordered PSCOA to "on request, bargain with the Union with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke."

F. PSCOA And BARSUEA Bargain To Impasse.

Consistent with the Board's Decision and Order, on April 4, 2012, representatives of PSCOA contacted Larry Sonnie, President of BARSUEA, to request that PSCOA and BARSUEA engage in bargaining over the effects of PSCOA's decision to discharge Business Agents Dyches, Hood, Hurd, Miller, and Parke. *TR* at 19. A meeting was held on April 4, 2012 between Mr. Sonnie for BARSUEA and Todd Eagan, Bob Stewart and Jason Bloom for PSCOA. *TR* at 19-20.

At that meeting, following a discussion of the discharges of Business Agents Dyches, Hood, Hurd, Miller, and Parke, PSCOA made an offer of severance as follows:

> A payment equal to two weeks' salary offset by a payment already made to the discharged Business Agents during a week (August 22, 2010 through August 28, 2010) for which they were already paid after the date of their removal on August 20, 2010.
>
> The remaining week of salary would be offset additionally by those amounts that Dyches, Hood, Hurd and Miller were already reimbursed for mileage which was, in the view of the PSCOA, fraudulent.

Tr at 20-29.

There is little dispute as to what was said at the April 4, 2012 meeting. Mr. Sonnie provided an Affidavit which set forth his version of what happened at the April 4, 2012 meeting. *See, Ex.* R-2. PSCOA also sent a letter dated April 4, 2012 to Sonnie, detailing PSCOA's offer. *JX* 1 In addition, at the hearing in this matter, a memo to file authored by Mr. Eagen from PSCOA was introduced as *Ex.* R-4 which detailed what happened at the April 4, 2012 meeting. There is little substantial difference between those written accounts and the testimony regarding what occurred.

Mr. Sonnie did not accept PSCOA's offer at the April 4, 2012 meeting because he wanted to speak to the discharged business agents to get their reaction. *Tr* at 25. Mr. Sonnie attempted to reach out to the discharged business agents to get their reaction but could not get them to return his phone calls. *Tr* at 26. PSCOA's Vice President, Larry Blackwell, was able to make contact with one of the business agents and was able to formulate a counteroffer based on what that agent told him. *Tr* at 26; 39.

BARSUEA Vice President Lawrence Blackwell mailed a formal counteroffer on April 10, 2012, to PSCOA. *JX* 2. In his letter, Mr. Blackwell demanded the following:

Hood:	2 weeks' severance pay, 70 days' vacation, $ 1,088 unpaid phone bill and last 6 week of mileage which was not received.
Dyches	2 weeks' severance pay and all unused leave paid back
Hurd:	2 weeks' severance pay and all unused leave paid back
Miller:	2 weeks' severance pay and all unused leave paid back
Parke	2 weeks' severance pay and all unused leave paid back

Jx-1

By letter to Blackwell dated April 11, 2012, PSCOA rejected the counteroffer and declared impasse. *JX* 3. Both Mr. Sonnie and Mr. Blackwell testified at hearing that they

specifically agreed that the parties were at impasse on April 11, 2012. *Tr* at 36; 40-41. They both believed that there was no point in further bargaining. *Tr* at 36. After April 11, 2012, neither the BARSUEA President nor any member of its Executive Committee contacted PSCOA to engage in further bargaining over the effects of the discharges of Dyches, Hood, Hurd, Miller, and Parke. *Tr* at 36; 41.

IV. ARGUMENT

A. THE ALJ ERRED IN NOT FINDING THAT AN IMPASSE WAS REACHED BETWEEN PSCOA AND MEMBERS OF THE BUSINESS AGENTS REPRESENTING STATE UNION EMPLOYEES ASSOCIATION ("BARSUEA") ON APRIL 11, 2012 OR EARLIER.

There is no doubt that PSCOA and BARSUEA reached impasse on April 11, 2012 after which PSCOA was entitled to implement its proposed remedy. Even PSCOA's bargaining counterpart, the President and Vice-President of BARSUEA, admitted that the parties had provided each other with their final offers and had arrived at a deadlock. *Tr* at 36; 40-41. The ALJ also found that the parties were at impasse but erred when he found that that this was not a proper impasse which should have tolled further impact bargaining and permitted PSCOA to implement its proposed remedy.

At hearing, the Regional Director produced no witnesses to contradict the position on impasse taking by PSCOA or the officers of BARSUEA. In point of fact, the only party that insists that impasse was not reached was the Regional Director, who was not involved in any of the bargaining.

The issue of impasse is important because, in the Board's decision of March 23, 2012, the Board adopted the finding of the ALJ who observed that, "Any severance pay due the business agents in this case would be subject to the bargaining process and Respondent is not required to agree to anything, *provided it bargains in good faith to impasse on the issue*." *See*, PSCOA, 358

NLRB No. 19 (2012). The Region has introduced no evidence that impasse was reached in bad faith instantly but instead frames a narrower issue, *to-wit*, that impasse was not properly reached because PSCOA chose to include mileage reimbursement in the bargaining over the *Transmarine* remedy ordered by the ALJ.

The General Counsel considers mileage reimbursement to be a permissive subject of bargaining. From this, the General Counsel posits, PSCOA's obligation to make whole continued until BARSUEA was defunct—a date which the General Counsel agrees was September 28, 2012. *Compliance Specification* at I(d) ("The *Transmarine* backpay period ended on September 28, 2012 ,the approximate date on which the Union became defunct and was no longer able to bargain.").

Two reasons explain why PSCOA properly achieved impasse on April 11, 2012. First, mileage reimbursement is *not* a permissive subject of bargaining but rather is a mandatory subject--that is, a matter that "vitally affect" wages, hours, and other terms and conditions of employment. Second, even if mileage reimbursement did constitute a permissive subject of bargaining, the evidence is clear that the parties both agreed to bargain over mileage reimbursement.

Parties engaged in collective bargaining are required to bargain over so-called mandatory subjects--that is, matters that "vitally affect" wages, hours, and other terms and conditions of employment. *Bricklayers (Daniel J. Titulaer)*, 306 NLRB 229, 235 (1992), citing relevant authorities. As to those subjects, the parties may hold to their positions without yielding, even to the point of impasse. But they are not required to bargain, and may not insist to impasse, on so-called permissive subjects, *although the parties may bargain about those matters and include them in an agreement if both sides consent*. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958).

Mileage reimbursement is one of the terms and conditions of employment for the business agents just as wages are and just as is the payment of vacation leave. *TR.* at 34. As such, it is a *mandatory* and **not** a permissive subject of bargaining over which the parties can reach impasse. *See*, *Shane Steel Processing, Inc.*, 347 NLRB No. 18, at *3 (2006) (mileage reimbursement is a mandatory subject of bargaining); *WPXI, Inc.* 299 NLRB No. 72 (1990) (mileage reimbursement is a mandatory subject of bargaining and employer's unilateral change of same constituted an unfair labor practice).

Accordingly, because the Board has established that mileage reimbursement is a mandatory subject of bargaining, impasse *can* be reached. One then needs only to turn to the record to see that impasse *was* reached.

Both Mr. Sonnie and Mr. Blackwell testified at hearing that they specifically agreed that the parties were at impasse on April 11, 2012. *Tr* at 36; 40-41. They both believed that there was no point in further bargaining. *Tr* at 36; 401-41 ("There was nothing left to bargain for"). After April 11, 2012, neither the BARSUEA President nor any member of its Executive Committee contacted PSCOA to engage in further bargaining over the effects of the discharges of Dyches, Hood, Hurd, Miller, and Parke. *Tr* at 36; 41.

The ALJ suggests that "had the Respondent not wrongfully insisted" on including milage in the bargaining "bargaining might well have gone forward." ALJD at 6; 2-5. This is pure speculation for which there exists no evidentiary support whatsoever. There is no evidence that the BARSUEA President nor any member of its Executive Committee ever felt this way.

The Region seems to suggest that, even if mileage reimbursement is a mandatory subject of bargain, the real issue is that PSCOA sought to get credit for allegedly fraudulently obtained mileage reimbursement that might be recovered in a lawsuit. The Region argues that the

conditioning of the credit for mileage reimbursement on a promise not seek legal redress in the courts is a permissive subject of bargaining. The Region's framing of this issue is tortured and misses the point.

While it is true that "the Board has repeatedly held that an employer may not condition bargaining on the withdrawal of unfair labor practice charges or other litigation." *WWOR-TV*, 330 NLRB 1265, 1265 (2000), that is not the case instantly. First, in *WWOR*, the employer refused to negotiate at all until the union there withdrew its grievance. That did not happen here.

PSCOA did not refuse to bargain nor did PSCOA request that the Claimants withdraw any litigation prior to negotiating on April 4, 2012 or on April 11, 2012. Further, pointing out during those negotiations that PSCOA *might* have the right to recover wrongly paid mileage reimbursement in later litigation did not violate the Act.

Even in *WWOR*, a Board majority explained that "a union can bargain in good faith with an employer while taking the legal position in other litigation that it was under no such bargaining obligation." *Id.* at 1266; *citing, International Paper Co.*, 319 NLRB 1253, 1264-1265, 1276 fn. 50 (1995), *enf. denied on other grounds,* 115 F.3d 1045 (D.C. Cir. 1997). The Board majority rejected the dissent's argument that the union's reservation of its contractual right to pursue arbitration was an unlawful condition that excused the employer's later refusals to bargain. *Id*; *see also, United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC and Local Union 193-G and PPG Industries, Inc.*, 356 NLRB No. 127, (2011)(Respondent's declaration that it would only bargain "provisionally" over subjects that PPG failed to present by the first day of bargaining for a new contract, including economic terms merely preserved a contractual

litigation position without affecting its willingness and ability to engage in good-faith negotiations, as evidenced by the Respondent's actual conduct at the bargaining table.)

Mileage reimbursement is a mandatory subject of bargaining. PSCOA sought to negotiate over mileage reimbursement that it contended was already wrongly paid. The Region's argument on this point constitutes sophistry or semantics.[2]

The ALJ argues that the parties were not truly at impasse because the issue of mileage reimbursement "derogates from a specific Board remedy amount." ALJD at 5; 22-25. One must examine that statement against what the ALJ originally wrote, to-wit:

> But there may be severance pay and other accrued, but unpaid, benefits, such as vacation or sick pay, that could be involved in effects bargaining. Any severance pay due the business agents in this case would be subject to the bargaining process and Respondent is not required to agree to anything, provided it bargains in good faith to impasse on the issue. Moreover, the typical remedy for effects bargaining, under the Board's order in Transmarine Navigation Corp., 170 NLRB 389 (1968), sets a floor of 2 weeks backpay, a not unreasonable severance package, in view of the bargaining violation I have found.

PSCOA, *supra* at 8.

While the ALJ may have implied that two weeks was due the business agents, neither he nor the Board precluded the Union or the PSCOA from bargaining over any other issue.

There is no basis to either assert or imply that the impasse reached was not a good faith impasse. While the General Counsel sought to have Mr. Blackwell testify that he would have continued to negotiate, that does not vitiate the fact that: 1) Mr. Sonnie was the President, not Mr. Blackwell; and 2) both Mr. Sonnie and Mr. Blackwell specifically agreed that the parties

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2 PSCOA also proposed a set off for a week of payment improperly received by the Claimants between August 22, 2010 through August 28, 2010. *See, JX* 1. The Region does not suggest that PSCOA failed to reach impasse in seeking a credit for that improperly obtained benefit. There is no appreciable difference between seeking a credit for that week and a credit for improperly paid mileage reimbursement. Both are mandatory subjects over which impasse may be reached.

were at impasse on April 11, 2012. Neither testified about any acts of bad faith on the part of PSCOA and nobody from the Union objected to any issue regarding bad faith.

As such, the inquiry over whether or not PSCOA fulfilled the requirements of the Board's order need go no further. The parties reached impasse over mandatory subjects of bargaining—the elements of a severance package—a specific condition of the *Transmarine* backpay initially ordered by the ALJ.

Alternatively, in the instant action, there is ample evidence of consent to bargain and bargain to impasse over the issue of mileage reimbursement. It is beyond dispute that, while the PSCOA included the issue of mileage reimbursement in its proposal of April 4, 2012, it is equally clear that the Claimants asked BARSUEA to bargain over that issue as well. The evidence is manifest in BARSUEA's April 11, 2012 letter to PSCOA which demanded, *inter alia*, the following:

> Hood: 2 weeks' severance pay, 70 days' vacation, $1,08 unpaid phone bill ***and last 6 week[s] of mileage which was not received.***

Jx-2

Thus, rather than objecting to the inclusion of an alleged permissive subject of bargaining, BARSUEA sought reimbursement. The fact that a tug of war ensued over whether or not mileage reimbursement was owed or not owed is the quintessence of a mandatory subject.

On this record, it seems surpassingly odd that the General Counsel would contend that impasse was not reached because of the inclusion of mileage reimbursement, an alleged permissive subject of bargaining (see foregoing, it is not permissive but mandatory) when the evidence undoubtedly established an agreement between both parties to bargain over the issue of mileage reimbursement.

As such, the Compliance Specification could have been dismissed on two grounds. First, mileage reimbursement—and implicitly whether or not it is owed—does constitute a mandatory subject of bargaining over which impasse may be reached. Second, even if, arguendo only, mileage reimbursement was not a mandatory subject of bargaining, the parties plainly and unmistakably agreed to bargain to impasse over that issue. If one accepts these propositions, then the Compliance Specification should have been dismissed and the ALJ erred in not so doing.

B. THE ALJ ERRED IN FAILING TO FIND THAT THE REGION'S FAILURE TO HANDLE A DECERTIFICATION PETITION WHICH WAS PROPERLY FILED PRECLUDED PSCOA FROM ARGUING THAT BARSUEA WAS DEFUNCT PRIOR TO APRIL 11, 2012 AND CUT OFF PSCOA'S BARGAINING RESPONSIBILITIES.

At hearing, the Region was forced to concede that members of the PSCOA properly filed a petition for decertification in January 2012. What is significant about this is that had the petition been processed and BARSUEA decertified, then the obligation to bargain would have been removed and this case mooted.

Put another way, the General Counsel *admits* that BARSUEA was defunct in September 2012 and that—as a direct result—the requirement to provide a *Transmarine* remedy ended. If that is so, then had the Region followed through with its obligation to process the Petition, then the requirement to provide a *Transmarine* remedy would have ended much sooner than September 2012. The fact that the Region failed to do the job it is statutorily required to do should mean that the Compliance Specification should be dismissed.

Under Section 9(c)(1)(A)(ii), an employee, group of employees, individual, or labor organization may file a decertification petition asserting that the currently certified or recognized

bargaining representative no longer represents the employees in the bargaining unit.[3] Such elections are barred, however, for one year following the union's certification by the NLRB. Plus, if the employer and a union reach a collective bargaining agreement, one cannot ask for a decertification election during the first three years of that agreement (the "contract bar"). However, if not barred by contract, under the Act, if 30% or more of the employees in a bargaining unit sign a decertification petition, the NRLB must conduct a secret ballot election to determine if a majority of the employees wish to decertify the union and stop it from any further "exclusive representation." NLRB CASEHANDLING MANUAL (PART TWO) Section 11023.1.

Here, the Region declined to process the petition but instead issued a letter to Shawn Smith indicating that the Region would wait for a decision by the Board on the issue of whether or not the July 19 collective bargaining agreement was valid. *See*, R-7. If the July 19 collective bargaining agreement was valid, the Board reasoned, that would act as a bar to an election for the following three years. *See*, R-7. The Region told Mr. Smith that it was "dismissing the petition, subject to reinstatement, if appropriate, upon conclusion of the unfair labor practice proceedings." *See*, R-7.

The Region's March 7, 2012 letter cites NLRB CASEHANDLING MANUAL (PART TWO) *Representation Proceedings* Section 11730.3(b) as justifying its action in dismissing the Petition. Section 11730.3(b) states that the Board may consider delaying resolution of representational issues where there are:

> Section 8(a)(2) and (5), 8(b)(3), or other charges which allege violations that involve recognition issues . . .[including] . . . allegations of 8(a)(5) or 8(b)(3) failure

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3 The showing requirement will be satisfied for a petitioner in a RD case if he/she has submitted cards or a signature list in support of the petition. The showing of interest for a RD petition is clear as to its intent if it indicates that the employees signing the showing no longer wish to be represented by the union. Sec. 11001.7. Signatures authorizing the petitioner to file a decertification petition also are acceptable. Sec. 101.17, Statements of Procedure. NLRB CASEHANDLING MANUAL (PART TWO) Section 11022.2. All of that is extant is this case and the Region has not disputed the validity of the Petition. *See*, R-5; *Tr* 70.

> to recognize or bargain, or 8(a)(1) and/or (3) violations requiring a remedial bargaining order. A determination of merit in such a charge *may* impose conditions upon or preclude the existence of the question concerning representation sought to be raised by the petition. e.g., Big Three Industries, 201 NLRB 197 (1973)). Sec. 11733.2(a)(2).

NLRB CASEHANDLING MANUAL (PART TWO) *Representation Proceedings* Section 11730.3(b)(emphasis added).

The fatal flaw in the Region's position is that the Board disposed of the charge on March 23, 2012. Thus, even though Section 11730.3(b) provides that "a determination of merit in such a charge *may* impose conditions upon or preclude the existence of the question concerning representation sought to be raised by the petition," no charge existed ***after*** March 23, 2012.

To the contrary, the precise issue on which the Board raised as a question which could preclude the existence of the question concerning representation, *e.g.*, a contract bar caused by the alleged continued validity of the July 19, 2010 Agreement was specifically eliminated by the Board's March 23, 2012 decision. PSCOA, *supra* at 6 ("McNany had no authority to enter into the July 19 collective bargaining agreement. Thus, that agreement has no legitimacy."). As such, the very reverse of the issue raised by Section 11730.3(b) was true and it was the Region's duty as of March 23, 2012 to proceed with the Petition to Decertify in order to permit the parties to resolve the question concerning representation.[4]

Fourteen days after the Board's letter, the unfair labor practice proceedings *did* conclude when the Board issued a Decision and Order on March 23, 2012, which specifically found that the July 19 Agreement was void. Despite that specific finding, the Region never reinstated the

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[4] It would indeed be a fatuous argument for one to suggest that the matters about which the Region now complains in the Compliance Specification would form a basis for delay or dismissal of the Petition to Decertify under Section 11730.3(b) since they all occurred subsequent to March 23, 2012 and would have not been ripe until April 11, 2012 at the earliest. The field was clear for the Region to act on the petition to decertify and there was no impediment to commencing proceedings to resolve the question of representation.

Petition for Decertification although a determination of whether or not BARSUEA still retained sufficient support in January 2012 would have made a material difference to the issue of whether PSCOA had a duty to bargain over the impact of dismissing the Claimants. The simple fact is that we will never know whether or not BARSUEA retained sufficient support in January 2012 due solely and inescapably to the inaction of the Region.

The Region, other than protesting, offers no explanation of its failure to process the petition. Although the Region's Compliance Officer, Shane Thurman, was present at hearing, the Region objected to his testimony even though his testimony might have provided some record or some explanation of the Region's inaction. The Region's refusal to provide any testimony which would contradict the testimony Mr. Smith or the facts set forth in the petition for decertification should be construed as an admission that the petition was entirely valid. Further, an inference should and must be drawn that the Region had no sufficient explanation for its failure to act.

The simple truth is that Region does not come to this portion of this case with clean hands. The Region cannot maintain that PSCOA failed in reaching impasse—the fact of which there is a discernable record created by PSCOA—where Region itself failed to process a previously filed and presumptively valid petition which would have, potentially, cut off the *Transmarine* backpay period. *Compare, c.f., Compliance Specification* at I(d) ("The *Transmarine* backpay period ended on September 28, 2012 the approximate date on which the Union became defunct and was no longer able to bargain.").

The ALJ addresses this issue in a footnote in which he notes that the decertification petition was properly dismissed by the region pending the outcome of the underlying case. ALJD

at 5-6; Note 8. He further suggests that the Petition could not have been reinstated until after the Respondent's failure to bargain was remedied. ALJD at 5-6; Note 8. This is error.

The ALJ also suggests that PSCOA waived any issue when it negotiated over effects (as the ALJ ordered it to do). ALJD at 5; 34-36. This is mistaken for two reasons. First, the decertification petition was filed by individual members of the Union, not the PSCOA so the PSCOA could not have waived their rights to a petition it never filed. Second, this essentially indicates that PSCOA erred in complying with an order of the Board to engage in effects bargaining. Being compelled to engage in effects bargaining is not the equivalent of a knowing waiver of one's rights.

It is simply inequitable as well as a denial of due process for the Region to have sought to sanction PSCOA and extend the *Transmarine* backpay obligation through September 28, 2012 where the Region's own failures are manifest. Because the harm to PSCOA due solely to the Region's failure to act is so fundamental, the Compliance Specification should have been dismissed by the ALJ and he erred in failing to do so.

V. CONCLUSION

Based on the foregoing, the Pennsylvania State Corrections Officers Association prays that the Board dismiss those sections of the ALJ's decision from which it takes exception.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2014, a true and correct copy of the foregoing *Pennsylvania State Corrections Officers Association's Brief in Support of its Cross-Exceptions to the Administrative Law Judge's Decision of May 23, 2014* was served via electronic mail upon the following persons:

Lawrence Blackwell, Vice President
Business Agents Representing State Union
Employees Association
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Pennsylvania State Corrections Officers Association *and* Business Agents Representing State Union Employees Association. Cases 04–CA–037648, 04–CA–037649, and 04–CA–037652

August 26, 2016

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On May 23, 2014, Administrative Law Judge Robert A. Giannasi issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief. The Respondent filed cross-exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order.

The issue in this compliance case is the amount of backpay owed as a result of the Respondent's failure to bargain with the Union over the effects of its decision to discharge five employees. Before turning to that question, however, we first address the General Counsel's May 4, 2016 motion to vacate the Board's March 23, 2012 Decision and Order in the unfair labor practice case and to consider de novo the judge's March 17, 2011 decision.

I. GENERAL COUNSEL'S MOTION

Facts

On March 17, 2011, the judge issued a decision finding, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain over the effects of its decision to discharge five employees. To remedy this effects-bargaining violation, the judge's recommended Order required the Respondent to engage in effects bargaining upon the Union's request, and to pay backpay pursuant to *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

The General Counsel filed exceptions regarding the judge's dismissal of two other allegations, and the Respondent filed an answering brief to the General Counsel's exceptions. There were no exceptions to the effects-bargaining violation or the *Transmarine* remedy.

On March 23, 2012, the Board issued a Decision and Order, reported at 358 NLRB 108 (2012), in which it rejected the General Counsel's exceptions. The Board also modified the judge's order "to conform to the violations found and to the Board's standard remedial language", and substituted a "new notice to conform to the Order as modified." Id. at 108, fn. 3. However, the Board did not address the merits of the effects-bargaining violation or the *Transmarine* remedy, and its "new notice" did not alter the substance of the judge's recommended Order and notice. Thereafter, the Respondent and the Union met for the purpose of engaging in effects bargaining pursuant to the judge's *Transmarine* remedy. The sufficiency of the parties' effects bargaining is the subject of this compliance case and is discussed below.

On May 4, 2016, the General Counsel filed a motion to vacate the Board's March 23, 2012 Decision and Order and to consider de novo the judge's March 17, 2011 decision. The Respondent did not file a response.

Discussion

The General Counsel's motion to vacate correctly states that, at the time the Board issued its March 23, 2012 decision, the composition of the Board included three persons whose appointments were later determined to be invalid. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). The General Counsel argues that de novo review of the judge's March 17, 2011 decision is therefore necessary to "obtain a valid Decision and Order on which to base the Board's determination concerning the compliance proceeding." We do not agree.

The General Counsel's motion is based upon an apparent misunderstanding of the record. In paragraph 2 of the motion, the General Counsel states:

> 2. On April 13, 2011 and April 26, 2011, respectively, Counsel for the General Counsel and Respondent filed exceptions to Judge Giannasi's Decision with the Board.

However, the Respondent did not file any exceptions; the document filed by the Respondent on April 26, 2011, was an answering brief to General Counsel's exceptions. Thus, the judge's finding of an effects-bargaining violation and his recommended *Transmarine* remedy were not challenged before the Board. By failing to file exceptions to the judge's decision and recommended Order, the Respondent waived its right to challenge any of the judge's findings, conclusions and recommendations, including the finding of an effects bargaining violation and the related *Transmarine* remedy. See 29 USC § 160(c); Section 102.48 of the Board's Rules and Regulations.

Moreover, in the 4 years since the issuance of the Board's March 23, 2012 decision, the Respondent has never sought to challenge that decision. Rather, as noted above, the Respondent and the Union met for the purpose of engaging in effects bargaining pursuant to the *Transmarine* remedy ordered by the judge. When a dispute arose regarding the sufficiency of the parties' effects bargaining, the Respondent did not contest its obligation to engage in effects bargaining. Instead, it argued that it had fulfilled that obligation. (See R. Exh. 4 (the Respondent's counsel's bargaining notes); Tr. 14.) Indeed, in its cross-exceptions and supporting brief in the present case, filed on July 3, 2014, after the Supreme Court issued its *Noel Canning* decision, the Respondent relied on the Board's March 23, 2012 decision in support of its arguments to the Board.

In summary, the Respondent did not challenge the judge's findings of an effects-bargaining violation or the related *Transmarine* remedy, through exceptions to the Board or otherwise. Moreover, the Respondent does not—and could not—challenge in this compliance proceeding either the judge's March 17, 2011 decision or the Board's March 23, 2012 decision.[1] Accordingly, in all the circumstances of this case, we find it unnecessary to revisit the Board's March 23, 2012 Decision and Order, and we deny the General Counsel's motion.[2]

II. COMPLIANCE CASE

We now turn to the judge's May 23, 2014 supplemental decision, in which the issue is the amount of backpay owed as a result of the Respondent's failure to bargain with the Union about the effects of its decision to discharge five employees. The judge found, and we agree, that the backpay period ran for 26 weeks, from March 28 to September 28, 2012. We disagree, however, with the judge's finding that discriminatee Bill Parke failed to mitigate his damages. We find that the corrections officer position that Parke declined was not substantially equivalent to his former position with the Respondent. Therefore, we conclude that all five discriminatees are entitled to the full 26-week backpay award.

A. Backpay Period

Facts

The Respondent represents corrections officers employed by the Commonwealth of Pennsylvania (the Commonwealth). Through a unique arrangement with the Commonwealth, the Respondent employs some of those corrections officers as its business agents. While employed by the Respondent, those individuals take a leave of absence from the Commonwealth but continue to accrue leave and pension credits and to draw a portion of their salary, for which the Respondent reimburses the Commonwealth. At the end of their employment with the Respondent, they have an automatic right of reinstatement to their former jobs as corrections officers with the Commonwealth.

Since July 21, 2010, Business Agents Representing State Union Employees Association (the Union) has represented the Respondent's business agents and support staff. On August 20, 2010, the Respondent discharged business agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Parke, and the Respondent directed them to return to their former positions as corrections officers. Dyches, Hood, Hurd, and Miller complied with this directive; Parke did not. Thereafter, the Union filed a charge alleging, inter alia, that the Respondent violated Section 8(a)(5) and (1) by failing to bargain over the effects of the discharges. On March 17, 2011, the judge issued a decision finding the effects-bargaining violation and recommending a limited backpay remedy pursuant to *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

In January 2012, the Respondent's employees filed a petition to decertify the Union. The Region dismissed the petition on March 7, 2012.

On April 4, 2012, the Respondent and the Union met and engaged in effects bargaining. The Respondent proposed bargaining about the Board's *Transmarine* backpay remedy. The Respondent's counsel's bargaining notes reflect that he told the Union's president the following: "[W]e were going to bargain over the effects of removing the business agents, which included a review of the *two week backpay remedy the Administrative Law Judge suggested* in this matter." (R. Exh. 4 (emphasis added).) The Respondent gave the Union documents "establishing what the *backpay amount* would be for the five removed business agents for a *two week period* immediately following their removal." (Id. (emphasis added).) The Respondent offered the Union 2 weeks' backpay without deductions for interim earnings. The Respondent stated, however, that it would deduct 1

[1] It is well settled that "[i]ssues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding." *Transport Service Co.*, 314 NLRB 458, 459 (1994); see also *NLRB v. Overseas Motors, Inc.*, 818 F.2d 517, 519, 520 (6th Cir. 1987); *NLRB v. Laredo Packing Co.*, 730 F.2d 405, 407 (5th Cir. 1984).

[2] Although not necessary to our decision, we have reviewed de novo the judge's March 17, 2011 decision and the record in the unfair labor practice case in light of the exceptions and briefs filed in that case. If the judge's decision were properly before us, we would adopt it, except that we would find it unnecessary to rely on the judge's discussion of *Fresno Bee*, 337 NLRB 1161 (2002), or *Alan Ritchey*, 354 NLRB 628 (2009).

week's severance pay that it had already paid the employees, and that it would treat the remaining 1 week's pay as a credit against damages it hoped to recover in future lawsuits against Dyches, Hood, Hurd, and Miller alleging fraudulent mileage reimbursements.[3] In an April 4, 2012 letter to the Union, the Respondent characterized its offer as "backpay . . . for a 2-week period" with 1 week's pay deducted because it had previously been provided and the other 1 week's pay treated as a credit in future lawsuits. (Jt. Exh. 1; see also R. Exh. 4.)

On April 10, 2012, the Union mailed the Respondent a counteroffer for Dyches, Hurd, Miller, and Parke of 2 weeks' severance pay and payment for all unused leave. The counteroffer for Hood was 2 weeks' severance pay, 70 vacation days, unpaid phone charges, and 6 weeks' mileage reimbursements.

On April 11, 2012, the Respondent rejected the Union's counteroffer, declared impasse, and stated that it would implement its April 4, 2012 offer as its final offer. The parties did not engage in any further effects bargaining, and the Respondent never paid any backpay to the discriminatees, pursuant to the *Transmarine* remedy.

Thereafter, the Regional Director issued a compliance specification. After a hearing, the judge issued a supplemental decision finding that none of the conditions specified in the *Transmarine* remedy had occurred, and that the backpay period ran from March 28 to September 28, 2012, the approximate date on which the Union became defunct and was no longer available to bargain. The judge rejected the Respondent's contentions that the backpay period ended either on April 11, 2012, due to the parties' impasse, or some time prior to September 28, 2012, due to the Region's refusal to process the decertification petition. The Respondent excepts, raising similar arguments to those rejected by the judge.

Discussion

For the reasons stated by the judge and for the additional reasons discussed below, we affirm the judge's finding that the backpay period ran for 26 weeks, from March 28 to September 28, 2012.[4]

First, we affirm the judge's finding that the parties' April 11, 2012 impasse was not a lawful impasse and therefore did not toll the backpay period.[5] As a preliminary matter, we agree with our dissenting colleague that, under *Transmarine*, an employer that has failed to engage in effects bargaining is ordered to do two things: (1) "bargain over the effects" of the underlying unlawful decision, and (2) give affected employees "limited backpay" for a period beginning 5 days after the date of the Board's Order and ending at the earliest occurrence of several conditions, including when effects bargaining results in an "agreement" or a "bona fide impasse," provided that the backpay shall be no less than what "employees would have earned for a 2-week period." *Transmarine*, 170 NLRB at 390. The dissent accuses us of conflating these two separate requirements. However, contrary to the dissent, it was the Respondent who conflated the requirements by proposing during effects bargaining that the parties bargain about the *Transmarine* backpay remedy and by insisting to impasse on its offer to the Union of "backpay . . . for a 2-week period" with 1 week's pay deducted because it had previously been provided and the other 1 week's pay treated as a credit in future lawsuits.[6] (Jt. Exh. 1; see also R. Exh. 4.)

The purpose of *Transmarine* backpay is "to restore at least some economic inducement for an employer to bargain as the law requires." *O. L. Willis, Inc.*, 278 NLRB 203, 205 (1986). "It provides that if there are delays in the bargaining process, backpay increases until one of the stated conditions is met, thereby insuring that the consequences to the respondent are progressively greater and that there is a corresponding enhancement of the union's bargaining strength." *Sawyer of Napa, Inc.*, 321 NLRB 1120, 1120 (1996). Permitting a party to bargain to impasse about *Transmarine* backpay would defeat the purpose of the remedy. Thus, whatever the parties agree to in effects bargaining is paid to the discriminatees *in addition* to *Transmarine* backpay.[7] Here, from the outset, the Respondent proposed reducing the *Transmarine* amount, insisting to impasse on its offer of 2 weeks'

[3] The Respondent later sued Dyches, Hurd, and Miller. Those lawsuits are still pending.

[4] Because we have denied the General Counsel's motion to vacate the Board's March 23, 2012 Decision and Order, we find it unnecessary to address our dissenting colleague's contention that if the Board were to issue a new Decision and Order adopting the judge's March 17, 2011 decision, the requirement that the Respondent engage in effects bargaining would commence with that decision. Additionally, we note that no party excepted to the judge's finding that the *Transmarine* backpay period began on March 28, 2012, and therefore, any challenge to the judge's finding has been waived. The only issue before the Board is whether the backpay period ended before September 28, 2012.

[5] The dissent asserts that "it is improper for the Board to gloss over the fact that the General Counsel and the Respondent *stipulated* that a bargaining impasse existed on April 11" and that our determination that the April 11, 2012 impasse was unlawful is "[e]ven more troubling." We reject those assertions. The parties' factual stipulation that the Respondent declared impasse on April 11, 2012, is separate and distinct from the legal question whether that impasse was lawful.

[6] The dissent characterizes the Respondent's offer as a "severance pay proposal." Contrary to the dissent, the record clearly demonstrates that the Respondent made a *backpay* proposal.

[7] An example helps illustrate this principle. At the end of 3 weeks of effects bargaining pursuant to *Transmarine*, a union and a respondent agree to 1 week's severance pay. The discriminatees will receive 1 week's severance pay *and* 3 weeks' *Transmarine* backpay.

backpay with 1 week's pay deducted because it had already been paid to the discriminatees and with the remaining 1 week's pay treated as a credit in future lawsuits. The Respondent never made a proposal that met its effects-bargaining obligation. Therefore, we agree with the judge that the parties' April 11, 2012 impasse was not a lawful impasse.

Furthermore, even if the Respondent was permitted to bargain over the Board's *Transmarine* backpay remedy, the Respondent's insistence to impasse on treating 1 week of *Transmarine* backpay as a credit against an anticipated recovery in a future lawsuit was impermissible. The Respondent in effect demanded a modification of the *Transmarine* remedy, which requires the Respondent to pay employees a minimum of 2 weeks' backpay minus only interim earnings. See *Sawyer of Napa, Inc.*, 321 NLRB 1120, 1120–1121 (1996) (finding "no legally cognizable impasse" and explaining, "[w]e are not, as asserted by our dissenting colleague, finding that the Respondent was required to adopt any particular position during effects bargaining. The Respondent was free to take any position it wished with respect to such bargaining. However . . . the Respondent was not free to modify [the *Transmarine* remedy] terms . . . .").[8] Further, the Respondent's 1-week's credit for future lawsuits cannot be categorized as interim earnings, and thus cannot be deducted from the 2-week minimum backpay award. A party cannot withhold backpay simply because it might recover that amount in a private lawsuit. See *The State Journal*, 238 NLRB 388, 388 and fn. 5 (1978), citing *Teamsters Local 705 (Randolph Paper Co.)*, 227 NLRB 694, 694-695 (1977) (finding that the respondent was not permitted to offset backpay by the amount of its private claim against the discriminatee for unpaid dues because the respondent's claim "involves a private debt which is irrelevant to these backpay proceedings"). In sum, in the effects bargaining, the Respondent was not entitled to demand that the *Transmarine* remedy be reduced from 2 weeks of backpay to 1 by claiming the second week as a credit against damages it hoped to recover in future lawsuits.

Second, we affirm the judge's finding that the Region's failure to process the decertification petition does not warrant terminating the backpay period prior to September 28, 2012. Contrary to the Respondent's assertion, the Region properly refused to process the petition. As noted by the judge, the petition could not have been reinstated until after the Respondent remedied its violations.[9] Furthermore, as recognized by the judge, the Union remained the bargaining representative because no election was ever held. The filing of a decertification petition itself has no effect on a union's bargaining status. See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 727 (2001) ("[T]he union remains the bargaining representative, and the employer's bargaining obligation continues, while the RM (or RD) election proceedings are underway."). Therefore, we affirm the judge's conclusion that the backpay period ran from March 28 to September 28, 2012.

B. Bill Parke

Facts

Prior to May 2002, Parke was a corrections officer at the State Correctional Institute in Houtzdale, Pennsylvania. He worked 40 hours per week and earned $2630 biweekly. His job duties involved the care, custody, and control of inmates.

In May 2002, the Respondent hired Parke as its assistant grievance manager in Harrisburg, Pennsylvania. He worked 50–60 hours per week and earned $3580 biweekly. His job duties involved enforcing the collective-bargaining agreement between the Respondent and the Commonwealth. To be closer to his job, he moved to Mechanicsburg, Pennsylvania. He later adopted two special needs children.

On August 20, 2010, the Respondent discharged Parke and the other four discriminatees and directed them to return to their former positions as Commonwealth corrections officers. Parke requested an 8-week leave of absence from the Commonwealth in order to move back to Houtzdale and to arrange for his children's school and services transfer. The Commonwealth granted Parke only a 2-week leave of absence. Parke did not return to his former position. Instead, he voluntarily retired and subsequently obtained employment in another industry.

[8] Therefore, there is no merit to the dissent's claim that "the Board cannot find a violation here based on a purported renegotiation of the Board-ordered *Transmarine* limited backpay award."

We do not, however, rely on the judge's statement that the Respondent's plan to deduct severance pay was contrary to the minimum backpay award. The General Counsel appears to agree that this was a proper deduction because he listed this payment as interim earnings in the compliance specification.

[9] Therefore, we do not rely on the judge's statement that the petition was not promptly acted upon by the Region.

Additionally, despite receiving notice from the Region that their dismissed petition was subject to reinstatement, if appropriate, upon conclusion of the unfair labor practice proceedings and subsequently receiving a copy of the March 2012 Decision and Order in the unfair labor practice case, the employees never requested that the Region reinstate the petition. See *Nu-Aimco, Inc.*, 306 NLRB 978, 979 (1992) (noting that "the policy of dismissing a petition or holding it in abeyance because of pending unresolved unfair labor practice charges . . . . postpones processing the petition until the unfair labor practice charges are resolved, at which time the petitioner is entitled to request reinstatement of the petition.").

Pursuant to the parties' collective-bargaining agreement and past practice, Parke was entitled to, but did not, request a transfer to a corrections facility closer to his home in Mechanicsburg. Parke testified that he knew that he had the right to request a transfer and that there was a corrections facility approximately 12 miles from his home.

In his supplemental decision, the judge found that Parke failed to mitigate his damages because he "'willfully incurred' a loss by his 'clearly unjustified' refusal to return to his former employment" as a Commonwealth corrections officer, citing *St. George Warehouse*, 351 NLRB 961, 963 (2007). The judge determined that the Commonwealth corrections officer position was "intrinsically intertwined" with Parke's assistant grievance manager position, and that overlooking these ties would provide Parke with an undeserved windfall. The General Counsel excepts, arguing that Parke did not fail to mitigate because the two jobs were not substantially equivalent.

Discussion

We agree with the General Counsel that the Commonwealth corrections officer position Parke declined was not substantially equivalent to his assistant grievance manager position with the Respondent. Therefore, we find that Parke is entitled to the full 26-week backpay award.

Discriminatees are required to engage in reasonable efforts to find substantially equivalent interim employment. See *Alamo Cement Co.*, 298 NLRB 638, 638 fn. 2 (1990); *Minette Mills*, 316 NLRB 1009, 1010 (1995). To determine whether interim employment is substantially equivalent to a discriminatee's former employment, the Board compares various criteria, such as pay, working conditions, job duties, commutes, and work locations.

Here, we find that Parke's position as Assistant Grievance Manager with the Respondent and the Commonwealth corrections officer position differed in pay, working conditions, and job duties. Parke earned almost $1000 less biweekly as a corrections officer than he did as assistant grievance manager, a 25 percent difference in pay. Compare *Arlington Hotel Co.*, 287 NLRB 851, 854 (1987), enf. denied on other grounds 876 F.2d 678 (8th Cir. 1989) (finding that a job that paid 25 percent less was not substantially equivalent). The positions also had different job duties and working conditions. Parke's job with the Respondent was wholly an office job; he enforced the collective-bargaining agreement. By contrast, Parke's corrections officer job with the Commonwealth was an active job that involved the care, custody, and control of prison inmates. Compare *Lord Jim's*, 277 NLRB 1514, 1516 (1986) (finding that busboy/bathroom cleaner job was not substantially equivalent to cocktail waitress job); *Lundy Packing Co.*, 286 NLRB 141, 144 (1987), enfd. 856 F.2d 627 (4th Cir. 1988) (holding that discriminatees are not required to accept interim employment with lower wages and less desirable working conditions). Without question, the corrections officer and assistant grievance manager positions were not substantially equivalent, and we therefore find that Parke did not fail to mitigate by declining to return to his corrections officer job.

ORDER

The National Labor Relations Board orders that the Respondent, Pennsylvania State Corrections Officers Association, Harrisburg, Pennsylvania, its officers, agents, successors, and assigns, shall pay the claimants the amounts specified after their names below, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings as required by Federal and State laws.

Lee Dyches	$9,646.25
Shawn Hood	3,235.89
Patricia Hurd	11,755.23
John Miller	8,243.08
Bill Parke	$24,332.27

Dated, Washington, D.C. August 26, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting in part.

This case arises from the lawful discharge of five employees. However, the Respondent did not satisfy its obligation to bargain over the effects of its decision to discharge these employees, and its failure in this regard violated Section 8(a)(5) of the National Labor Relations

Act (NLRA or the Act).[1] The matter currently before the Board concerns the remedy for this "effects-bargaining" violation. Under longstanding case law, the remedies for an effects-bargaining violation are more limited than the remedies ordered when the underlying decision is unlawful.

As my colleagues correctly note, when a party unlawfully fails to bargain over the effects of a lawful decision, the backpay remedy is a limited one, as set forth in a case decided nearly 50 years ago, *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Under *Transmarine*, the party that has failed to engage in required effects bargaining is ordered to do two things: (i) to "bargain over the effects" of the underlying lawful decision; and (ii) to give affected employees "limited backpay" for a period ending when effects bargaining results in "agreement" or a "bona fide impasse" (whichever occurs first), provided that the backpay shall be no less than what "employees would have earned for a 2-week period." *Transmarine*, 170 NLRB at 390.[2]

In the circumstances presented here, I believe the parties may have been unclear regarding what was being addressed in effects bargaining. But my colleagues and the judge are better informed regarding what the Board's effects-bargaining order required and what occurred in bargaining, and I believe the majority has devised a remedy that conflates two separate things: (i) the *Transmarine* backpay *remedy*, which the Board controls, and (ii) Board-ordered effects *bargaining*, the substance of which the parties control. The result is a remedy that is contrary to Section 8(d) of the Act, which precludes the Board from imposing substantive terms on parties in bargaining, and that exceeds the scope of the Board's remedial powers under Section 10(c) of the Act, which precludes the Board from imposing penalties on parties because the Board disapproves of the parties' lawful proposals. Accordingly, I respectfully dissent from the backpay obligation formulated by my colleagues in this case.[3]

Discussion

I believe the Respondent complied with the judge's March 17, 2011 effects-bargaining order. In my view, my colleagues' decision reflects a misunderstanding of the record, and more importantly, I believe my colleagues misunderstand the distinction between Board-ordered bargaining, on the one hand, and Board-ordered backpay, on the other.

First, my colleagues fail to acknowledge that the judge *required* the Respondent to engage in effects bargaining and that the Respondent *complied* with that order. In effects bargaining, the Respondent formulated a lawful severance pay proposal. One aspect of that proposal was that 1 week's severance pay would be held back pending resolution of a dispute between the Respondent and the discharged employees concerning mileage reimbursements the employees might be required to repay to the Respondent.[4]

Severance pay (including details regarding amount, timing of payment, and potential deductions or offsets) is a mandatory subject of bargaining, about which both the employer and union may insist to impasse.[5] There is no

[1] See, e.g., *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981) (although a particular *decision* is not a mandatory subject of bargaining, "bargaining over the effects of a decision must be conducted in a meaningful manner and at a meaningful time").

[2] The *Transmarine* remedy is based on a recognition that where an employer has already carried out layoffs or discharges, the union may no longer have leverage in bargaining over the effects of those actions, so that a bare order requiring the employer to engage in effects bargaining may fail to "assure meaningful bargaining." Thus, to "recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the [employer]," the Board in *Transmarine* provided "a limited backpay requirement," under which, beginning 5 days from the date of the Board's order, the employer must pay the former employees affected by its decision "at the rate of their normal wages when last in the [employer's] employ . . . until the occurrence of the earliest" of several alternative conditions, one of which is "a bona fide impasse in bargaining"—the condition that occurred in the instant case—but in no event less than 2 weeks' wages. *Transmarine*, 170 NLRB at 390.

[3] Because I would find that Respondent owes no more than 2 weeks' backpay to the affected employees, including former employee Bill Parke, I do not reach or pass on whether Parke failed to mitigate Respondent's backpay liability during the longer backpay period imposed by my colleagues.

For the reasons stated by my colleagues, I join in the denial of the General Counsel's motion to vacate the Board's March 23, 2012 Decision and Order and to consider de novo the judge's March 17, 2011 decision. Unlike my colleagues, however, I have not reviewed de novo the judge's March 17, 2011 decision, and I express no views as to whether I would or would not adopt the judge's decision if it were properly before the Board. I note, however, that the judge's March 17, 2011 decision included an order requiring the Respondent to engage in effects bargaining, and if the Board *were* to issue a decision and order adopting the judge's March 17, 2011 decision, the Respondent would be entitled to an opportunity to comply with that order by engaging in the ordered effects bargaining, and the issue addressed in today's supplemental decision—whether the Respondent *complied*, past tense, with the judge's March 17, 2011 effects-bargaining order would be moot.

[4] The judge described Respondent's effects-bargaining proposal as follows: "It offered to pay the claimants 2 weeks' pay without deductions for interim earnings, less 1 week's pay claimants received at the time of their discharge for time they did not work for Respondent. Those amounts would then, according to Respondent, be considered a credit against monies allegedly received by claimants for improper mileage reimbursements during their employment. Respondent has sued for the return of such mileage reimbursements in civil lawsuits against Claimants Dyches, Hurd and Miller. Those lawsuits are still pending." Judge's decision, infra, slip op. at 11.

[5] See *Champion International Corp.*, 339 NLRB 672, 688 (2003); *Your Host, Inc.*, 315 NLRB 295 (1994); *Waddell Engineering Co.*, 305 NLRB 279 (1991).

claim that effects bargaining failed to commence in a timely manner, nor is it alleged that the Respondent failed to bargain in good faith. The sole criticism levied by the judge and my colleagues relates to the *substance* of Respondent's severance pay proposal. However, the Board is prohibited from dictating the substance of bargaining. Section 8(d) states that the obligation "to bargain collectively" requires parties "to meet at reasonable times and confer in good faith," but "such obligation does not compel either party to agree to a proposal or require the making of a concession." And in *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970), the Supreme Court held that the Board's remedial powers do not include a power to dictate any substantive term of an agreement:

> It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, *leaving the results of the contest to the bargaining strengths of the parties*. . . . The Board's remedial powers under § 10 of the Act are broad, but they are limited to carrying out the policies of the Act itself. *One of these fundamental policies is freedom of contract*. While the parties' freedom of contract is not absolute under the Act, allowing the Board to compel agreement when the parties themselves are unable to agree would violate the *fundamental premise on which the Act is based—private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract*.

Id. at 107–108 (emphasis added); see also *NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960) ("Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences.").

My colleagues—like the judge—confuse the *remedies* the judge ordered here (that Respondent engage in effects bargaining and provide a limited backpay remedy consistent with *Transmarine*, supra) with the substance of the Respondent's effects-bargaining *proposal* regarding severance pay (including amounts, deductions, and an offset pending resolution of a dispute over mileage reimbursements). The Board has authority to require the Respondent to engage in effects bargaining, and the Board also has the authority to impose a *Transmarine* limited backpay award. However, my colleagues mistakenly conflate the two, and they improperly regard the Respondent's effects-bargaining proposal—the substance of which the Board cannot lawfully dictate—as an effort to negotiate or renegotiate the *Transmarine* backpay remedy.

The *Transmarine* backpay period started running on March 28, 2012.[6] Under *Transmarine*, the "limited backpay" period ends when the parties reach an agreement or impasse, whichever occurs first, with the further caveat that Board-ordered backpay will not be less than 2 weeks' pay. The Respondent and the Union commenced effects bargaining on April 4. And the General Counsel and Respondent stipulated that "[o]n April 11, PSCOA and [the Union] reached an impasse in bargaining."[7] A total of 14 days elapsed from March 28 (when the *Transmarine* backpay period commenced) to April 11 (when, as stipulated, bargaining reached an impasse). Therefore, consistent with the Board's "limited backpay" award and *Transmarine*, the Respondent owes the affected employees 14 days' backpay, which also happens to equal the 2-week minimum backpay period.

However, instead of ordering the Respondent to pay the affected employees 2 weeks' backpay, my colleagues find that the Respondent owes those employees *26 weeks'* backpay. They extend the backpay period through September 28, the approximate date on which the Union became defunct and was no longer available to bargain. My colleagues do not dispute that under *Transmarine*, the "limited backpay" period ends when effects bargaining reaches impasse, and they acknowledge that the General Counsel and the Respondent stipulated that an impasse was reached on April 11. They find, however, that the stipulated impasse was not a *lawful* impasse, on the basis that the Respondent, in effects bargaining, was required to offer the Union at least the *Transmarine* minimum backpay remedy—i.e., 2 weeks' pay—and failed to do so. My colleagues especially denounce the Respondent's proposal to defer a portion of severance pay pending the resolution of disputed mileage reimbursements that the employees might be required to repay. Based on this proposal, my colleagues find that Respondent's effects-bargaining proposals were "contrary to the *Transmarine* remedy, which requires the Respondent to pay employees a minimum of 2 weeks' backpay minus only interim earnings."

I respectfully disagree with my colleagues' analysis. Preliminarily, I believe it is improper for the Board to gloss over the fact that the General Counsel and the Respondent *stipulated* that a bargaining impasse existed on April 11, when all parties to the stipulation—especially

[6] The judge issued his recommended decision and order on March 17, 2011, which was affirmed on March 23, 2012. Consistent with *Transmarine*, the backpay period commenced running 5 days after March 23, or March 28, 2012. (Unless otherwise indicated, all other dates referenced in this opinion occurred in 2012.)

[7] Stipulation of Facts filed by the General Counsel and Respondent, dated April 14, 2014 (admitted as Jt. Exh. 7).

the General Counsel—must have understood the legal effect of that stipulation under *Transmarine*, i.e., that the backpay period *terminated* on April 11. Even more troubling, however, is the majority's determination that the April 11 impasse was unlawful. As noted previously, I believe that my colleagues confuse the *remedies* imposed here (requiring the Respondent to engage in effects bargaining and provide a minimum of 2 weeks' backpay) with the substance of the Respondent's *proposals* in effects bargaining.

In my opinion, the majority's finding that the Respondent's effects-bargaining proposal was "contrary" to the *Transmarine* limited backpay remedy is based on the false premise that Board-ordered *backpay* under *Transmarine* enters into Board-ordered effects *bargaining* and limits the substantive proposals that may be put forward by either party. These two components of a *Transmarine* remedy are clearly distinct. One component is the requirement that the parties engage in effects bargaining, as to which Section 8(d) prohibits the Board from dictating substantive terms or proposals. The other component is the *Transmarine* "limited backpay" remedy, which is *not* subject to negotiation between the parties but rather is imposed by the Board, and which is separate from the parties' substantive proposals in effects bargaining. That remedy is dictated by the terms set forth in *Transmarine*, under which the running of the "limited backpay" period terminates when the parties reach agreement or impasse (whichever comes first), provided that employees receive a minimum of 2 weeks' backpay.

Therefore, contrary to my colleagues' conclusion that the *Transmarine* remedy required the Respondent, *in effects bargaining*, to offer the Union a minimum of 2 weeks' pay, the Board lacks the authority to impose *any* minimum requirement regarding the substance of a party's bargaining proposals. As the Supreme Court stated in *NLRB v. Insurance Agents*, supra, "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." See also Section 8(d), supra; *H. K. Porter*, supra. In collective bargaining, including Board-ordered effects bargaining, parties are free to advance whatever position they wish, subject to narrow limitations not at issue in the instant case.[8] Nor does anything in *Transmarine* preclude a party from including in its offer proposals such as those formulated by the Respondent, including a proposal to defer a portion of severance pay based on amounts that the Respondent believed it was entitled to recover from the discharged employees. These issues are grist for the mill of lawful effects bargaining, and they are especially appropriate subjects when the employer, the union and affected employees may wish to resolve all financial issues that exist in relation to lawful terminations of the employment relationship, like those at issue in the instant case.

The record evidence suggests that the parties themselves were unclear regarding what was being addressed in effects bargaining and what was encompassed by the Respondent's effects-bargaining proposal. However, there is no question that effects bargaining took place consistent with the judge's order, and I believe the Board cannot find a violation here based on a purported renegotiation of the Board-ordered *Transmarine* limited backpay award. For starters, the Board's remedial order did not authorize or direct the Respondent to bargain over the *Transmarine* backpay remedy.[9] The Board remains responsible for enforcement of the *Transmarine* backpay remedy, regardless of whether or not one party or the other may have believed the remedy could itself be the subject of effects bargaining, so there is no risk that bargaining could have compromised the minimum backpay period prescribed in the effects-bargaining order.

[8] Parties are forbidden to bargain for an illegal subject. For example, a party may not bargain for a contract clause permitting an employer or union to discriminate on an unlawful basis, such as race or sex. See, e.g., *Independent Metal Workers (Hughes Tool Co.)*, 147 NLRB 1573 (1964). Here, there is no allegation that the Respondent's effects-bargaining proposals involved actions that would have violated State or Federal law. Nor is there any reasonable basis for concluding that Respondent's pay proposal involved a permissive subject of bargaining that cannot lawfully be insisted upon to impasse. See *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958); supra fn. 5.

[9] The order directed the Respondent, "[o]n request," to "bargain with BARSUEA [the Union] with respect to the effects of its decision to discharge Business Agents Lee Dyches, Shawn Hood, Patricia Hurd, John Miller, and Bill Parke." 358 NLRB No. 19, slip op. at 1. By comparison, the *Transmarine* backpay order directed the Respondent to "[p]ay its discharged business agents . . . their normal wages for the period set forth in the remedy section of the judge's decision." Id. The judge's decision, in turn, directed the Respondent to pay the affected employees "backpay at their normal wages from 5 days after the date of this order until the earliest of . . . (1) the date Respondent bargains to agreement as to the effects of the discharges" or "(2) a bona fide impasse in bargaining. . . ." Id., slip op. at 8. Obviously, nothing in these remedial requirements suggests the Board-ordered backpay remedy was to be a subject in effects bargaining.

It appears that the Respondent misunderstood the judge's order as setting the minimum amount of *Transmarine* backpay as an appropriate starting point for an effects-bargaining proposal. However, the Union was free to reject that offer—which it did, making a counteroffer—and the Respondent never took the position that the judge's "suggestion" placed a 2-weeks'-pay *ceiling* on the amount of severance pay it could be required to furnish under any agreement reached in good-faith effects bargaining. As noted in the text below, the record also reveals that the Union regarded the Respondent's effects-bargaining proposal as involving severance pay, not as an attempt to negotiate the minimum *Transmarine* backpay period.

Moreover, the Respondent's severance pay proposal in effects bargaining differed from the Board's *Transmarine* backpay remedy in two respects. First, the *Transmarine* backpay order provided that "net interim earnings" would be deducted from the gross amount of backpay owing to the five employees.[10] In contrast, Respondent's effects-bargaining proposal offered the affected employees "two weeks pay *without deductions for interim earnings*." Second, the Respondent in effects bargaining offered 2 weeks' pay (with the setoff and holdback described above in fn. 5) at a time when nobody knew or could have known when bargaining might result in an agreement or impasse. In contrast, the *Transmarine* backpay order provided for an *indefinite* amount of backpay, with the accrual of backpay commencing March 28, 2012, and continuing until effects bargaining resulted in an agreement or an impasse, whichever occurred sooner. Finally, my colleagues' finding that the Respondent in effects bargaining did nothing more than attempt to negotiate downward the Board-ordered backpay remedy is negated by the General Counsel's stipulation that the Respondent and the Union reached an impasse in effects bargaining. A bargaining impasse presumes good-faith bargaining.

It also appears clear that the *Union* understood that Respondent's effects-bargaining proposals were separate and independent from the Board-imposed *Transmarine* "limited backpay" award. After the Respondent transmitted its offer,[11] the Union formulated a counterproposal. The judge described the Union's counterproposal and subsequent bargaining as follows:

> Union Vice President Lawrence Blackwell mailed a counteroffer to Respondent on April 10, 2012. The counteroffer was as follows: 2 weeks' severance pay and all unused vacation or leave paid back for Dyches, Hurd, Miller, and Parke; and 2 weeks' severance pay, 70 vacation days, unpaid phone charges and 6 weeks' of mileage reimbursement for Hood. Blackwell also rejected the set off for mileage reimbursement *because he contended that there was no proof that it was invalidly claimed.* On April 11, 2012, Respondent rejected the Union's counteroffer, giving reasons in support of its position. It also stated that impasse in bargaining had occurred. The parties stipulated that Respondent and the Union reached an impasse on April 11, 2012.

Judge's decision, infra, slip op. at 11 (emphasis added). Thus, the Union opposed the Respondent's setoff proposal on its merits, not on the basis that was inconsistent with *Transmarine*. Again, this is the type of bargaining conduct that is contemplated in Board-ordered effects bargaining, and Section 8(d) prohibits the Board from requiring anyone to include *any* particular substantive terms in its proposals.

Finally, regardless of whatever confusion may have existed between the parties regarding precisely what was being addressed in effects bargaining, I believe the Board's finding that the parties' effects bargaining was deficient requires that they pass on the substance of the Respondent's proposals, which is precluded under Section 8(d) of the Act.

On the other hand, as stated above, the Board does have the authority to impose on the Respondent the *Transmarine* limited backpay obligation. The *Transmarine* backpay period commenced running on March 28 and ended 14 days later on April 11—the date when bargaining reached an impasse, as stipulated—making it appropriate for the Board to require the Respondent to provide backpay to the five affected employees for a period of 14 days, or 2 weeks.[12]

For the reasons explained above, I do not believe the Board can properly find that Respondent's lawful conduct during ordered effects bargaining warrants a *Transmarine* "limited backpay" award that exceeds 2 weeks. Therefore, I believe the majority's backpay award, spanning an additional 24 weeks, is effectively a fine. Not only is such a penalty proscribed by Section 8(d)—since it results from the Board's disapproval of the *substance* of Respondent's lawful effects-bargaining proposals—it is also improper because nonremedial penalties have long been held to exceed the scope of the Board's remedial authority under Section 10(c) of the Act. See, e.g., *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 235–236 (1938).[13]

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[10] The judge's order provided that "[a]ny backpay owing, *less any net interim earnings*, shall be computed . . . with interest . . . compounded daily. . ." (emphasis added).

[11] The Respondent's effects-bargaining offer was extended in writing, and the judge's description of Respondent's offer is quoted in fn. 4, supra.

[12] The record establishes that the Respondent had previously given the affected employees 1 week's pay for time they did not perform any work. See fn. 4, supra. Although my colleagues object to the Respondent's proposal to defer a portion of severance pay pending resolution of the mileage reimbursement dispute, they do not find improper the Respondent's proposed deduction of the 1 week's pay previously provided to the affected employees. Although I believe Respondent's effects-bargaining proposals are distinct from the Board-ordered "limited backpay" that is part of a *Transmarine* remedy, I concur with my colleagues' finding that the 1 week's pay previously provided by Respondent may be deducted from the *Transmarine* backpay remedy.

[13] In support of their contention that Respondent's proposal was contrary to the *Transmarine* remedy, my colleagues rely on *Sawyer of Napa, Inc.*, 321 NLRB 1120 (1996). *Sawyer of Napa* differs materially from this case. To understand how, recall that the central purpose of *Transmarine*'s limited backpay remedy is "to assure meaningful bargaining." 170 NLRB at 390. By putting the employer's former employees back on the payroll while effects bargaining proceeds, *Trans-*

Conclusion

Based on the above considerations, I respectfully dissent from any effects-bargaining backpay remedy to the extent it exceeds 14 days' backpay.

Dated, Washington, D.C. August 26, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

David Rodriguez, Esq., for the General Counsel.
Michael McAuliffe Miller, Esq. (Eckert, Seamans, Cherin & Mellott), for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. The hearing in this compliance matter was held on April 14, 2014, in Philadelphia, Pennsylvania. The compliance specification, as revised, sets forth alleged moneys due former employees Lee Dyches, Shawn Hood, Patricia Hurd, John Miller and Bill Parke (hereafter the claimants) under the *Transmarine*[1] backpay remedy ordered in the Board's underlying decision in this case reported at 358 NLRB No. 19 (March 23, 2012). The compliance specification states that the Board's order directed Respondent to bargain with the Charging Party Union (hereafter the Union or BARSUEA) over the effects of its decision to discharge[2] the claimants and to pay them normal wages they would have earned commencing five (5) days after the issuance of the order until the earliest of the following conditions:

> (1) the date that Respondent bargained to agreement with the Union over the effects of the layoffs; (2) the date a bona fide impasse in effects bargaining occurred; (3) the failure of the Union to request bargaining within five business days after receipt of the Board's Order, or to commence negotiations within five business days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. The Board further ordered that, in no event, would the sum paid to any of the claimants exceed the amount that any of them would have earned as wages from the date of their layoffs to the time they each secured equivalent employment; nor would the sum paid to the complaints be less than they would have earned for a two week period as their normal wages when they last were in Respondent's employ, plus interest.

The compliance specification lists the claimants' bi-weekly earnings at the time of their discharges as follows: Dyches—$3,099.48; Hood—$3,194.52; Hurd—$3,145.25; Miller—$2860.57; and Parke—$3,158.12. The specification also alleged that the claimants were on leaves of absence from their corrections officers jobs with the Commonwealth of Pennsylvania (the Commonwealth) while they were employed by Respondent. By agreement with the Commonwealth, a portion of their pay was paid by the Commonwealth and the remainder was paid directly by Respondent, but Respondent reimbursed the Commonwealth for the portion it paid. Their bi-weekly earnings set forth above include both portions of pay.

The compliance specification further alleges that none of the conditions specified in the Board order occurred and that the back pay period ran 26 weeks from March 28, 2012 (5 days after the Board order issued) until September 28, 2012, the approximate date on which the Union that represented the claimants became defunct and was no longer able to bargain. As revised at the hearing, the specification sets forth the gross backpay amounts for each claimant, less interim earnings, resulting in a net back pay amount for each. The total amounts to some $57,000, plus interest.[3]

marine seeks to induce in the employer a state of mind like that of a passenger in a taxicab: "Hurry up, the meter's running." In *Sawyer of Napa*, the employer was under the mistaken impression that the meter stopped running at 2 weeks. Instead of a *minimum* of 2 weeks' pay, it believed that *Transmarine* provided for a *maximum* of 2 weeks' pay. Under those circumstances, the Board concluded that "the [r]espondent did not suffer the full consequence of the *Transmarine* remedy and the [u]nion was not accorded the full bargaining strength that the *Transmarine* backpay provisions were designed to generate." 321 NLRB at 1120. In other words, in *Sawyer of Napa* the employer's misconception affected *the bargaining process itself*, which Congress entrusted to the Board's oversight. See *H. K. Porter*, 397 U.S. at 107–108 ("It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties."). I also find unpersuasive my colleagues' reliance on *State Journal*, 238 NLRB 388 (1978), and *Teamsters, Local 705*, 227 NLRB 694 (1977). In *State Journal*, the discriminatee had assigned his earnings to his wife, and the employer had paid the discriminatee's backpay to his wife pursuant to that assignment. The Board held that payment to the discriminatee's wife did not discharge the employer's backpay obligation to the discriminatee. Those facts and that holding have no bearing on this case. In *Teamsters, Local 705*, the Board disallowed the union's claimed backpay offset for union dues owed by the discriminatee, whose discharge the union had secured in violation of Sec. 8(b)(1)(A) and (2). The Board explained that "the object of the [backpay] remedy is to discourage discrimination against employees contrary to the statute and thereby to vindicate the policies of the Act. *Consequently*, [r]espondent is not permitted to reduce the amount of backpay by the amount of its private claim for dues." 227 NLRB at 694 (emphasis added). Here, in contrast, the issue is whether Respondent bargained to a valid impasse in effects bargaining, and my colleagues are imposing a backpay remedy—far in excess of that contemplated by *Transmarine*—based on their disapproval of the substance of Respondent's effects-bargaining proposals, and contrary to the parties' stipulation that an impasse over those proposals had been reached in bargaining.

[1] *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

[2] The specification erroneously refers to the terminations as layoffs.

[3] The parties stipulated that the back pay calculations for Dyches, Hood, Hurd and Miller set forth in the revised compliance specification are properly calculated. Respondent disputes the calculation as to Parke because it contends that Respondent did not mitigate his back pay liability when he declined to return to his former correction officer's position. Respondent, however, agrees that, if its contention as to Parke, is rejected, the back pay calculation for Parke is accurate.

Respondent filed an answer alleging that it had lawfully bargained to an impasse over the amounts due, thus satisfying one of the key requirements of the Board's order. It also asserted that the Union was "essentially defunct and disclaimed any bargaining obligation prior to September 28, 2012." The answer admitted the biweekly earnings of the claimants set forth in the compliance specification. It also admitted the portion of the specification set forth above dealing with the pay of the claimants while they were on leaves of absence from their former jobs. With specific reference to claimant Parke, the answer alleged that he voluntarily declined to return to his former position as a correctional officer for the Commonwealth of Pennsylvania, which he originally left to become an employee of Respondent, even though that opportunity was available to him, as it was to other claimants who returned to their former positions. The answer thus asserts that any backpay for him should be cut off as of the date he declined to return to his former position.

The parties filed posthearing briefs which I have read and considered.

The Facts

Respondent represents some 11,000 corrections officers employed by the Commonwealth of Pennsylvania. Respondent employs some 18 individuals who were represented by the Union. Some of those individuals, including claimants, were former corrections officers. When they were employed by Respondent, the claimants were on leaves of absences from their corrections officer jobs. By agreement with the Commonwealth, a portion of their pay was paid by the Commonwealth and the remainder was paid directly by Respondent, but Respondent reimbursed the Commonwealth for the portion it paid. The claimants also accrued pension and leave credits from the Commonwealth during their employment with Respondent. (Tr. 35–36, 64–65.)

After their discharge by Respondent, all the claimants received letters, dated August 20, 2010, directing them to return to their original correctional institutions to resume their employment there. Work was available for those individuals at their original correctional institutions. (Jt. Exh. 7.) Parke was the only claimant who did not return to his former position as a corrections officer. He voluntarily retired from his former position and accepted either a pension or a lump sum settlement both from the Commonwealth and from Respondent. He did, however, obtain other employment in another industry.[4]

Parke testified that when joined Respondent he left his corrections officer position in Houtzdale, Pennsylvania, and moved to Mechanicsburg, Pennsylvania, nearer to his work site with Respondent in Harrisburg. That was some two and a half hours drive away from Houtzdale. He also testified that, before deciding to retire, he did not request a transfer from his former corrections position to one closer to his home than his work site at Respondent. Such transfers are readily available and permitted under the applicable collective-bargaining agreement. (Tr. 47–58.)

On April 4, 2012, representatives of Respondent met with Larry Sonnie, the president of the Union, to engage in effects bargaining pursuant to the Board's decision of March 23, 2012. This was the parties' only face to face bargaining meeting. This meeting was initiated by Respondent, whose representative contacted Sonnie. The Union apparently had no knowledge of the Board's decision and had not attempted to initiate effects bargaining. (Tr. 19.)

Respondent's position was set forth in a letter to Sonnie, dated April 4. It offered to pay the claimants 2 weeks' pay without deductions for interim earnings, less 1 week's pay claimants received at the time of their discharge for time they did not work for Respondent. Those amounts would then, according to Respondent, be considered a credit against moneys allegedly received by claimants for improper mileage reimbursements during their employment. Respondent has sued for the return of such mileage reimbursements in civil lawsuits against Claimants Dyches, Hurd and Miller. Those lawsuits are still pending.[5]

Union Vice President Lawrence Blackwell mailed a counteroffer to Respondent on April 10, 2012. The counteroffer was as follows: 2 weeks' severance pay and all unused vacation or leave paid back for Dyches, Hurd, Miller, and Parke; and 2 weeks' severance pay, 70 vacation days, unpaid phone charges and 6 weeks' of mileage reimbursement for Hood. Blackwell also rejected the set off for mileage reimbursement because he contended that there was no proof that it was invalidly claimed.

On April 11, 2012, Respondent rejected the Union's counteroffer, giving reasons in support of its position. It also stated that impasse in bargaining had occurred. The parties stipulated that Respondent and the Union reached an impasse on April 11, 2012. It was also stipulated that neither party made any other effort to contact the other to engage in further effects bargaining.[6]

Sonnie and Blackwell retained their positions in the Union until September 28, 2012, when all parties agree that the Union became defunct. Sonnie testified that he tried to reach out to the claimants to determine their positions on the Respondent's April 4 offer, but none of them returned his calls. He then turned the matter over to Blackwell, who apparently was able to make contact with at least one of the claimants. (Tr. 26, 28, 39–40, 83.) According to Sonnie, between April 2012 and September 2012, the Union was "in a holding pattern" because a petition to decertify the Union was filed with the Board's Philadelphia regional office. He testified that "nobody wanted to do anything because we didn't know whether we were going to be there or not." (Tr. 37.)

A petition to decertify the Union was filed on January 26, 2012, with the Region 4 of the Board in Philadelphia. Attached to the petition was a statement, signed by 11 of the 18 employ-

[4] The parties agree that, under the collective-bargaining agreement between Respondent and the Union, as well as pursuant to past practice, claimants were entitled to return to their former positions as corrections officers. Tr. 15–16.

[5] Respondent's claims of invalid mileage reimbursement included an amount for Hood, but, according to the stipulation of the parties, no lawsuit was filed against Hood to recover the mileage amounts he apparently owed. The parties also stipulated that Parke was not accused of collecting invalid mileage reimbursements.

[6] Respondent conceded that its position on mileage reimbursement, at least, was insisted upon to the point of impasse. Tr. 16–17.

ees in the unit represented by the Union, that the signers no longer wanted the Union to represent them. (R. Exh. 5.) On March 7, 2012, while the underlying case was still pending before the Board, the regional director for Region 4 dismissed the decertification petition because of the then-existing 2010 bargaining agreement whose validity was at issue in the underlying case, "subject to reinstatement, if appropriate," upon conclusion of the underlying case. In fact, in the Board's March 23, 2012 decision, the 2010 contract was declared invalid. R. Exh. 7. But apparently no one asked for reinstatement of the decertification petition and no election was held. Furthermore, as indicated above, the Respondent dealt with the Union in effects bargaining in April 2012.

Discussion and Analysis

There are several issues in this case: (1) Did the back pay period end on April 11, 2012, when the parties were admittedly at impasse in their effects bargaining, as Respondent alleges, or September 28, 2012, when the Union became defunct, as the General Counsel alleges? The answer to that question turns on how one views Respondent's conditions for agreement—that its offer of 2 weeks' back pay be set off by an earlier week's pay to the claimants that was unearned and by any amounts due to Respondent because of improper mileage reimbursements to claimants. The General Counsel asserts that these conditions were not mandatory subjects of bargaining. Respondent says that they were. (2) If Respondent's contention on the above question fails, did the back pay period end at some point before September 28, as Respondent contends, because the Union was essentially incapable of bargaining, mainly because of the filing of a decertification petition, which was not promptly acted upon by the regional office? (3) As to Parke, was Respondent's back pay liability tolled because Parke, alone among the claimants, voluntarily declined to return to his former position as a corrections officer, as Respondent contends?

It is settled that a lawful impasse cannot exist if a party insists that any agreement include a nonmandatory subject of bargaining—that is, a subject that does not "vitally affect" wages, hours or terms and conditions of employment. See *Cushman & Wakefield, Inc.*, 360 NLRB No. 10, slip op. 4 (2013), and cases there cited.

Here, it is clear that the parties were at impasse in bargaining over the effects of the decision to discharge the claimants. It is Respondent's position that the Board's order in the underlying case tolled back pay at the point that the parties were at lawful impasse. But it is also clear that the Board's order required a minimum of two weeks of back pay. Respondent offered two weeks of back pay, but required that there be a set off against that amount of an earlier payment of one week of pay that allegedly had been unearned and of whatever it alleged was improper mileage reimbursement to some claimants during their employment. These conditions were contrary to the minimum back pay remedy in the Board's order. Insistence to impasse on a position that derogates from a specific Board remedy amounts, in my view, to insistence on an illegal subject of bargaining. See Chapter 16 VI. B. of *The Developing Labor Law* (Sixth Edition, 2012). At the least, such a position does not constitute a mandatory subject, about which the other party must bargain. Accordingly, I find that the impasse of April 11 was not a valid impasse and the back pay period continued to run thereafter.[7]

Nor do I find that the Union was incapable of bargaining at any point before September 28, 2012, when it became defunct. Clearly, the Union was operative in April 2012 when Respondent engaged with it in effects bargaining. Thus, any contention that the decertification petition, which was filed in January 2012, made the Union incapable of bargaining must fail. No election was held and thus the Union was still a viable entity, at least insofar as carrying out the bargaining contemplated in the Board's order in the underlying case. Moreover, Respondent negotiated with the Union over effects bargaining, thus waiving any right to challenge its representative status. See *Fallbrook Hospital,* 360 NLRB No. 73, slip op. 1 (2014) (employer waived its right to challenge validity of a union's certification by entering into negotiations with that union).[8]

It is true that neither side requested a return to the bargaining table after April 11. But that was because Respondent poisoned the well by insisting on improper conditions that caused an impasse. Had it not wrongfully insisted on those conditions, contrary to the Board's order, the bargaining might well have gone forward. Thus, Respondent, like any wrongdoer, cannot profit from any lack of bargaining from mid-April until the September 2012 date the Union became defunct. I therefore reject the Respondent's position and agree with the General Counsel's position that the back pay period runs until September 28, 2012.

The above applies to the claims of Dyches, Hood, Hurd and Miller. Parke is different because I must consider the separate allegation that he failed to mitigate Respondent's back pay liability by not returning to his former employment with the Commonwealth of Pennsylvania, as did the other claimants. See *St. George Warehouse*, 351 NLRB 961, 963 (2007).

I agree with Respondent that Parke failed to mitigate the back pay obligation to him. He voluntarily retired from his former position and refused even to consider asking for a transfer to a position nearer his home that was likely available. I reject the General Counsel's attempt (Br. 18–20) to treat Parke's former corrections officer position as the usual kind of interim employment. That job was intrinsically intertwined with his position with Respondent. Parke's job as assistant grievance manager for Respondent was based to a great degree

[7] The briefs of the parties on this issue seem to joust on a separate point—whether seeking a set off for mileage reimbursement, particularly in light of pending lawsuits against some but not all of the claimants, amounts to a mandatory or permissive subject of bargaining. In view of my rationale for finding no lawful impasse, set forth above, I need not address this point. But the General Counsel seems to have the better of the argument since Respondent's set off is comparable to conditioning agreement on a general release of claims, which is a permissive, not a mandatory, subject of bargaining. See *Borden, Inc.*, 279 NLRB 396, 398–399 (1986).

[8] As the General Counsel points out (Br. 15), the decertification petition was properly dismissed by the region pending the outcome of the underlying case. The petition was not reinstated thereafter, and could not have been until after the Respondent's violation (failure to engage in effects bargaining) was appropriately remedied.

on his former experience as a corrections officer since Respondent represents corrections officers. Moreover, as indicated above, Parke was simply on leave of absence from his former position. Indeed, part of his compensation from Respondent was paid by the Commonwealth. He also accrued pension and leave credits from the Commonwealth during his employment with Respondent. And he had an absolute right to return to his former position after his leave of absence was over. To overlook these ties to his former position in determining the mitigation issue would provide Parke with a windfall he does not deserve. Thus, in the particular circumstances of this case, I find that Parke "willfully incurred" a loss by his "clearly unjustified" refusal to return to his former employment. *St. George Warehouse*, above, quoting from applicable authorities.

I do not believe, however, that Parke is entitled to no back pay, as Respondent seems to contend. He is entitled to the minimum 2 weeks of back pay set forth in the Board's order in the underlying case.

On these findings and conclusions, and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, its officers, agents, successors and assigns, shall pay the claimants the amounts specified after their names below, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.

Lee Dyches	$9,646.25
Shawn Hood	3,235.89
Patricia Hurd	11,755.23
John Miller	8,243.08
Bill Parke	$3,158.12

Dated, Washington, D.C., May 23, 2014

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

CERTIFICATE OF SERVICE

I, Michael McAuliffe Miller, counsel for petitioner and a member of the Bar of this Court, certify that on April 6, 2017, I caused a copy of the Deferred Joint Appendix to be filed with the Clerk through the Court's electronic filing system. I further certify that all parties required to be served by other means have been served.

Dated: April 6, 2017

/s/ Michael McAuliffe Miller
Michael McAuliffe Miller, Esquire