

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CENTRAL BUCKS EDUCATIONAL SUPPORT :
PERSONNEL ASSOCIATION PSEA/NEA :
 :
v. : Case No. PERA-C-10-97-E
 :
CENTRAL BUCKS SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On March 29, 2010, Central Bucks Educational Support Personnel Association PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Central Bucks School District (District) alleging that the District violated Section 1201(a) (1), and (3) of the Public Employe Relations Act (PERA).

On April 22, 2010, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was scheduled for hearing on June 4, 2010, in Doylestown, Pennsylvania. After a series of granted continuance requests, the hearing took place on October 8, 2010, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer.
2. The Association is an employe organization.
3. Charles Scarborough has been employed by the District as a grounds utility person since 2007. As such, his responsibilities include both inside and outside work, throughout the year. (Joint Exhibit 1, District Exhibit 1).
4. Because Scarborough thought that he was improperly passed over for overtime, he filed a grievance pursuant to the parties' collective bargaining agreement on January 25, 2010. That grievance was amiably settled on February 1, 2010. (N.T. 11, 13; Association Exhibit 1).
5. On January 26, 2010, the District sent Scarborough an e-mail that set forth with specificity, a series of tasks Scarborough was to perform, and completion dates for each of those tasks. (Association Exhibit 2).
6. In the past, the District had admonished Scarborough for his failure to complete assigned work in a time frame the District thought proper. The District had, in the past, assigned Scarborough outside tasks in the winter. (District Exhibit 1, 3, 4, 5, 6, 7).

DISCUSSION

The Association filed this charge alleging that the District violated Section 1202(a) (1) and (3) of PERA when it assigned Scarborough "work that was not his assigned responsibility and work that he could not do[,] as punitive measures."

The District parries this charge by arguing that Scarborough's assigned tasks were nothing new, and that he had been assigned similar, if not identical duties in the past.

Because the Association has not proved discrimination on this record, the charge is dismissed in its entirety. A review of Board law and the facts of this case offer insight into the reasons for this dismissal.

To prevail when charging a violation of Section 1201(a)(3), the Association must show, by substantial and legally credible evidence, that Scarborough engaged in protected activity, that the District was aware of that protected activity, and that but for Scarborough's protected activity, the complained of adverse action would not have been taken by the District. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

All this record shows is that the District assigned tasks to Scarborough as it had in previous years. Albeit, Scarborough filed a grievance on, or about January 25, 2010, and the following day, January 26, 2010, Scarborough was sent an e-mail outlining specific assignments, and the dates by which each of those assignments needed to be completed. Nevertheless, none of the assigned tasks were out of the ordinary for Scarborough.

The fact that there are stated timelines in the e-mail to Scarborough might smack of a retaliatory intent by the District, if it were not for the fact that the District, in the past, sent memos to Scarborough about his lackadaisical performance of tasks assigned.

Given Scarborough's past performance, it is hard to consider the January 26, 2010, e-mail as anything other than the District structuring the workdays of an employee that the District had to closely direct in the past.

CONCLUSION

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The District has not committed unfair practices within the meaning of Section 1201(a)(1) and (3) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-first day of December, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, HEARING EXAMINER