

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARLOWE FREEMAN :
 :
 v. : Case No. PF-C-10-102-E
 :
 CITY OF CHESTER :

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by Marlowe Freeman (Freeman) on July 6, 2010, alleging that the City of Chester (Chester) violated Section 6(1)(a), (c) and (d) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.¹

On July 23, 2010, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 16, 2010, in West Chester, Pennsylvania, 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 and exhibits presented at the hearing and from all other matters and documents of record, makes the following

FINDINGS OF FACT

1. Freeman is an employe and a policeman, within the meaning of Section 3(f) of the PLRA and Act 111.

2. Chester is a political subdivision of the Commonwealth of Pennsylvania and an employer within the meaning of Section 3(c) of the PLRA and Act 111.

3. Six bargaining unit members, including Marlowe Freeman, were Plaintiffs in a civil suit filed in the Court of Common Pleas of Delaware County, against the Union and Chester. The suit sought to compel the Union to seek arbitration of contractual grievances filed by the Plaintiffs. According to the Court docket, the complaint was filed on March 3, 2010. Chester's attorney filed an appearance with the Court on April 1, 2010. (Freeman Exhibit 1, 2).

DISCUSSION

Freeman charges Chester with violations of Section 6(1)(a), (c) and (d) of the PLRA, as read with Act 111. The protected activity for which Freeman alleges he was retaliated against was his filing suit against the Union and Chester. The basis of that suit was that the Union refused to take Freeman's grievance to arbitration under the parties' collective bargaining agreement.²

Freeman's charge sets forth eight specific instances in which he alleges Chester retaliated against him. These instances occurred between March 23, 2010, and May 4, 2010. They are:

1. Launching an investigation of Freeman in April of 2010, involving a domestic dispute;
2. Issuing Freeman a written reprimand for the manner in which Marlowe answered the police intercom;

¹ The charge form indicated that Freeman was alleging, *inter alia*, a violation of Section 6(1)(d) of the PLRA. However, there were no proofs submitted at the hearing, and Freeman made no argument concerning a violation of this section in his post-hearing brief. Therefore, it is dismissed.

² Essentially, Freeman filed what's commonly referred to as a "DFR" suit. That is, a duty of fair representation suit, against his Union. Chester was a party because the remedy requested was for the Union and the Chester to arbitrate Freeman's underlying grievance according to the party's collective bargaining agreement. (Freeman Exhibit 1, p.8).

3. Issuing Freeman a written reprimand for his, allegedly, refusing an assignment;
4. Sending Freeman home and docking him for an entire day's wages;
5. Suspending Freeman for three days, supposedly for the same incident as set forth in #4 above;
6. Suspending Freeman for five days in June 2010;
7. Refusing to provide Freeman with a "reasonable accommodation related to his disability;" and
8. Creating a "hostile work environment" for Freeman.

Chester parries Freeman's charge by arguing that Freeman's filing of the civil suit is not protected activity. Moreover, argues Chester, Freeman has not proved knowledge of his protected activity by those Freeman alleges took the adverse actions against him.

Because freeman has not shown that anyone who took the complained of actions against him had actual knowledge of his civil suit, I need not reach the issue of whether that suit constituted protected activity. A review of what Freeman must prove to sustain a charge of unfair practices alleging discrimination under Board law shows why the charge is dismissed.

An employer commits an unfair labor practice under Section 6(1)(c) of the PLRA if it discriminates against an employe for engaging in protected, concerted activity. To support a charge of discrimination, the complainant must establish that the employe engaged in activity protected by the PLRA, that the employer had knowledge of that activity, and that the employer took adverse action against the employe because of the protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). The employer's motive creates the offense under Section 6(1)(c) of the PLRA. PLRB v. Ficon, 434 Pa. 383, 254 A.2d 3 (1969).

Freeman has not shown that those he alleges took adverse action against him were aware of his filing the civil suit against the Union and Chester. Absent that knowledge, as a matter of law, Chester cannot have violated Section 6(1)(c) of the PLRA. Temple University (Jeanes Hospital), 29 PPER ¶ 29033 ((Proposed Decision and Order, 1998).

CONCLUSIONS

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

1. Chester is a political subdivision and a public employer under Act 111.
2. Freeman is an employe within the meaning of Section 3(d) of the PLRA as read with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. Chester has not committed unfair labor practices in violation of Section 6(1)(a), (c) and (d) of the PLRA as read with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices filed to the above case number is dismissed and the complaint issued thereon rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this seventeenth day of December, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner