

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CHRIS P. BLOUNT<sup>1</sup> :  
 :  
 v. : Case No. PERA-C-10-418-E  
 :  
 ALLENTOWN CITY SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On November 17, 2010, Chris P. Blount (Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Allentown City School District (Respondent or District) alleging that the District violated Sections 1201(a)(1), (3) and (4)<sup>2</sup> of the Public Employe Relations Act (PERA).

On November 30, 2010, the Secretary of the Board issued a Complaint and Notice of Hearing in which the case was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and February 23, 2011, in Allentown was scheduled as the time and place of hearing if necessary.

A hearing was necessary but was continued to April 6, 2011 on the motion of the Complainant without objection from the Respondent.

The hearing was held on the rescheduled date. At the hearing, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

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 Allentown City School District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7-8)
2. Chris P. Blount is a public employe within the meaning of Section 301(2) of PERA. (N.T. 7-8)
3. Mr. Blount was employed as security officer for the District from 2004 until his termination on July 1, 2010. (N.T. 11, 49-50)
4. The Security Officers of America (Union) is the exclusive bargaining representative for the District's security guards. (N.T. 120)
5. During his employment, Mr. Blount held several positions with the Union. He was assistant shop steward, chief shop steward from 2007 to 2009, then president from 2009 to 2010. (N.T. 12)
6. Mr. Blount was assigned to Louis E. Dieruff High School. (N.T. 17)
7. The principal of Dieruff High School was James Moniz and the assistant principals were Tamara Stavenski-Bennick and Michael Marks. (N.T. 18)
8. In his capacity as a president of the security officers, Mr. Blount filed several grievances on behalf of fellow bargaining unit members and met with District administrators over issues of importance to the bargaining unit members. (N.T. 12, 13)

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<sup>1</sup> The caption was amended at hearing to correct the complainant's name.

<sup>2</sup> The complainant withdrew the Section 1201(a)(4) allegation at the time of his brief.

9. In January, 2010, Mr. Blount used a union grievance form to allege that Mrs. Stavenski-Bennick violated the District's confidentiality policy by releasing information concerning Mr. Blount's interaction with a student to a probation officer. (N.T. 21, 28, Complainant's Exhibits 1 and 2)

10. In January, 2010, Mr. Blount wrote up a complaint of harassment, alleging that Mr. Moniz harassed him by improperly requesting that Mr. Blount report to this office and bring a union representative with him. (N.T. 21, 33, Complainant's Exhibit 3)

11. As union president, Mr. Blount regularly dealt with Dr. Russell Mayo, the deputy superintendent for administration (N.T. 15, 77)

12. In May, 2010, Mr. Blount was involved in an incident on involving a student that resulted in a complaint being filed against him. (N.T. 18-20)

13. In June 2010, Dr. Mayo conducted an investigation of certain activity involving Mr. Blount and his interaction with the student. D.S. (N.T. 45, 46, 83, 100)

14. One of the pieces of evidence reviewed in Dr. Mayo's investigation was a videotape captured on the District's surveillance camera, which Mr. Blount and the Union requested and which Dr. Mayo provided to them in response to their request. (N.T. 91)

15. Dr. Mayo interviewed witnesses when conducting his investigation of the incident, and he asked Mr. Moniz to sit with him while he conducted the interviews because Mr. Moniz was the Principal of the school and Dr. Mayo ordinarily asks the school principal to sit in on interviews when he conducts investigations. (N.T. 17, 108)

16. In July, 2010, as a result of the findings made by Dr. Mayo in his investigation, Dr. Mayo recommended to the District's Board of School Directors that Mr. Blount be discharged from his employment with the District. (N.T. 83-85)

17. That the way Dr. Mayo conducted his investigation was to only question persons who had information about the incident or who directly saw it or was directly spoken to about it. (N.T. 104-105)

18. Because of this approach, Dr. Mayo did not interview Ms. Stavenski or Mr. Marks or Mr. Moniz. (N.T. 104-105)

19. On July 22, 2010, the District's Board of Directors voted to terminate Mr. Blount's employment retroactive to July 1, 2010. (N.T. 81-82 Complainant's Specification of Charges, paragraph 1).

## DISCUSSION

Chris P. Blount's charge of unfair practices alleges that the District terminated his employment as a security guard as an act of retaliation for his filing grievances on his own behalf and behalf of fellow guards in violation of Sections 1201(a)(1), (3) and (4) of the Public Employe Relations Act (PERA). Following the hearing, in counsel's brief, the complainant withdrew the allegation that the employer violated Section 1201(a)(4) of PERA.

The Section 1201(a)(3) allegation will be discussed first. Section 1201(a)(3) of PERA prohibits employers from "discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization." 43 P.S. § 1101.1201(a)(3). In order to prove a violation of Section 1201(a)(3) of PERA, the complainant must prove three elements: (1) that the complainant engaged in protected activity; (2) that the employer knew of the complainant's protected activity and (3) that the employer was motivated by anti-union animus in taking the adverse action. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373. 1069 (1977). In proving the third element, it is necessary to show that the employer took action that was motivated by the employe's protected activity. "The motive creates the offense." PLRB v. Stairways, Inc. 425 A. 2d 1172, 1175 (Pa. Cmwlth. 1981). The complainant has the burden of proving all the elements of his charge by substantial and legally credible evidence. St. Joseph's Hospital v. PLRB, supra.

The complainant proved the first two elements of the discrimination charge. He was a leader in the security guards union, most recently serving as its president in the time immediately prior to his termination. He was active in his role, filing grievances for himself and his fellow union members. Dr. Russell Mayo, the administration official who recommended his termination, knew of Mr. Blount's union activities.

It is the third element of the St. Joseph's Hospital test that is in dispute. The District argues that the Complainant did not meet his burden of proving that the District was motivated by anti-union animus to in deciding to terminate Mr. Blount. The District contends that it was motivated not by anti-union animus but by a sincere desire to terminate Mr. Blount's employment for misconduct.

The Complainant argues that its case for animus rests not on overt statements of anti-union animus but on inferences drawn from the record as a whole, a method of proof long accepted by the Board. Child Development Council of Centre County, 9 PPER ¶ 9188 (Final Order, 1978).

There are a number of factors the Board considers in determining whether anti-union animus was a factor in the layoff of the Complainant: the entire background of the case, including any anti-union activities by the employer; statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge, or layoff, of the adversely affected employe, the effect of the discharge on unionization efforts—for example, whether leading organizers have been eliminated; the extent to which the discharged or laid-off employe engaged in union activities; and whether the action complained of was "inherently destructive" of important employe rights."

9 PPER 9188, at 380.

The Complainant contends that factors in the present case from which an inference can be drawn that anti-union animus motivated the decision include statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge and the extent to which the discharged or laid-off employe engaged in union activities.

The thrust of the complainant's argument is based on the combination of the first and second factors. The Complainant's supervisor was Principal James Moniz. Over the years, Mr. Blount and Mr. Moniz had several differences that caused Assistant Superintendent Dr. Russell Mayo to step in to mediate. Dr. Mayo decided that in the future, any employment matters that Blount had at work would be dealt with by assistant principal Michael Marks and not Mr. Moniz.

The Complainant argues that the discriminatory motivation for the employment action against him was evidenced by Dr. Mayo breaking that agreement and allowing Principal Moniz to sit in on the investigatory interview with Mr. Blount. The Complainant contends that this breach of the agreement reveals the District's true motivation, i.e. to retaliate against Mr. Blount for his grievance filing.

Dr. Mayo testified that he allowed Mr. Moniz to sit in on the investigation of the allegation of Mr. Blount's misconduct because it was his practice in all cases where he conducted an investigation of misconduct to have the principal attend the meeting. Furthermore, Dr. Mayo testified that the evidence he obtained against Mr. Blount was not based on anything from Mr. Moniz but from a videotape and other sources. Mr. Moniz' presence at the investigatory meeting was inconsequential to the conclusion that Dr. Mayo reached. Dr. Mayo's testified in a credible fashion. The complainant presented no reasons to discredit his testimony. The District offered credible testimony that the termination was for reasons that were not related to Mr. Blount's protected activities.

In light of all the evidence, it is difficult to accept the Complainant's argument that an inference of anti-union animus may be drawn from the facts. The third element of the St. Joseph's Hospital test has not been proven. Accordingly, because the complainant

has not met his burden of proof, the charge of unfair practices alleging a violation of Section 1201(a)(3) must be dismissed.

The Complainant has also alleged the District violated Section 1201(a)(1) of PERA, which prohibits public employers from "interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act." 43 P.S. 1101.1201(a)(1). An independent violation of Section 1201(a)(1) of PERA occurs, "where in light of the totality of the circumstances the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Under this standard, the complainant does not have to show improper motive or that any employees have in fact been coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985); Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER ¶ 97 (Final Order, 2004).

In the present case, the complainant contends that the District's decision to terminate him was an instance of retaliation that met the "tendency to coerce" test in the law. However, the test requires looking at the "totality of the circumstances" and in this case, when all of the evidence surrounding the decision to terminate Mr. Blount is assessed, it is difficult to conclude that the District's decision had a tendency to coerce a reasonable employee in the exercise of his protected rights. Dr. Mayo testified credibly that he recommended Mr. Blount's termination because of his sincere belief of misconduct, following an investigation, and not because of Mr. Blount filing grievances. Accordingly, the charge alleging a violation of Section 1201(a)(1) will also be dismissed.

#### CONCLUSIONS

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

1. That the Allentown City School District is a public employer within the meaning of Section 301(1) of PERA.
2. That Chris P. Blount is a public employee within the meaning of Section 301(2) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the District has not committed unfair practices in violation of Section 1201(a)(1), (3) and (4) of PERA.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

#### HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint rescinded.

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this twenty-ninth day of July, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner