

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHRIS P. BLOUNT :
 :
 v. : Case No. PERA-C-10-418-E
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 :
 ALLENTOWN CITY SCHOOL DISTRICT :

FINAL ORDER

Chris P. Blount filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 15, 2011, challenging a Proposed Decision and Order (PDO) issued on July 29, 2011. In the PDO, the Board's Hearing Examiner concluded that the Allentown City School District (District) did not violate Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA) when it discharged Mr. Blount.¹ The District filed a timely response to the exceptions and a supporting brief on August 31, 2011.

The Hearing Examiner's findings of fact are summarized as follows. In 2004, Mr. Blount became a security officer for the District and was assigned to the Louis E. Dieruff High School. The Principal of Dieruff High School was James Moniz and the Assistant Principals were Tamara Stavenski-Bennick and Michael Marks.

Mr. Blount held several positions with the Security Officers of America (Union), the exclusive bargaining representative for the District's security officers, during his employment with the District. He was Assistant Shop Steward, Chief Shop Steward from 2007 to 2009 and President from 2009 to 2010. In his capacity as Union President, 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. He regularly dealt with Dr. Russell Mayo, the Deputy Superintendent for Administration, concerning union matters.

In January 2010, Mr. Blount filed a grievance alleging that Assistant Principal Stavenski-Bennick violated the District's confidentiality policy by releasing information concerning Mr. Blount's interaction with a student to a probation officer. Also in January 2010, Mr. Blount filed a harassment complaint alleging that Principal Moniz harassed him by improperly requesting that he report to Principal Moniz's office and bring a union representative with him.

In May 2010, Mr. Blount was involved in an incident with a student that resulted in a complaint being filed against him. In June 2010, Dr. Mayo conducted an investigation of Mr. Blount's interaction with the student. One of the pieces of evidence reviewed by Dr. Mayo during his investigation was a videotape captured on the District's surveillance camera. Mr. Blount and the Union requested a copy of the videotape and Dr. Mayo provided them with a copy. Dr. Mayo also interviewed witnesses during his investigation of the incident. Dr. Mayo asked Principal Moniz to sit with him while he conducted the interviews because it was his practice to have the school principal sit in on interviews during an investigation. Dr. Mayo only questioned persons who had seen the incident or were directly spoken to about it. Dr. Mayo did not interview Principal Moniz or Assistant Principals Stevenski-Bennick and Marks.

In July 2010, as a result of the findings made by Dr. Mayo in his investigation, he recommended to the District's Board of Directors that Mr. Blount be discharged. On July 22, 2010, the Board of Directors voted to discharge Mr. Blount retroactive to July 1, 2010.

¹ Mr. Blount also alleged in his Charge that the District violated Section 1201(a)(4) of PERA. However, Mr. Blount withdrew that portion of the Charge in his post-hearing brief. Therefore, that allegation is no longer before the Board.

Mr. Blount filed a Charge of Unfair Practices on November 17, 2010, alleging that the District violated Section 1201(a)(1), (3) and (4) of PERA by discharging him in retaliation for his filing of grievances. A hearing was held before the Board's Hearing Examiner on April 6, 2011, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The Hearing Examiner concluded in the PDO that the District did not violate Section 1201(a)(3) of PERA because Mr. Blount failed to establish that the District's decision to discharge him was motivated by anti-union animus. The Hearing Examiner further concluded that Mr. Blount failed to prove an independent violation of Section 1201(a)(1). Therefore, the Hearing Examiner dismissed the Charge of Unfair Practices.

Mr. Blount initially alleges in his exceptions that the Hearing Examiner erred by failing to make various findings of fact. The Hearing Examiner must set forth those findings that are relevant and necessary to support the conclusion reached, but need not make findings summarizing all of the evidence presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). The Board finds that the Hearing Examiner made the findings that are necessary to support the proposed decision, and that the suggested findings of fact are not necessary or relevant. As such, the Hearing Examiner did not err in failing to make the additional findings offered by Mr. Blount.

Mr. Blount further alleges that the Hearing Examiner erred in concluding that he failed to establish that the District's decision to discharge him was motivated by anti-union animus. To establish a discriminatory discharge under Section 1201(a)(1) and (3) of PERA, the charging party must prove that (1) the employee engaged in protected activity; (2) the employer was aware of the employee's protected activity; and (3) the employer took adverse action against the employee because of a discriminatory motive or anti-union animus. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). The charging party must demonstrate that all three elements are present in order to establish a prima facie case of discrimination. Colonial Food Service Educational Personnel Association v. Colonial School District, 36 PPER 88 (Final Order, 2005). The filing of grievances is activity protected by PERA. Montrose Area Education Association v. Montrose Area School District, 38 PPER 127 (Final Order, 2007). Mr. Blount asserts that anti-union animus can be inferred through his filing of grievances against Principal Moniz and Assistant Principal Stavenski-Bennick and the presence of Principal Moniz during Dr. Mayo's interview with him contrary to an alleged agreement between the parties that Assistant Principal Marks would handle any matters involving Mr. Blount.

In concluding that Mr. Blount failed to meet his burden of proof, the Hearing Examiner credited the testimony of Dr. Mayo and stated as follows:

Dr. Mayo testified that he allowed [Principal] 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 [Principal] Moniz but from a videotape and other sources. [Principal] Moniz' presence at the investigatory meeting was inconsequential to the conclusion that Dr. Mayo reached. Dr. Mayo[] 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.

(PDO at 4). Thus, the Hearing Examiner determined that Dr. Mayo credibly testified that the District's decision to discharge Mr. Blount was based on his misconduct, and not due to his protected activity of filing grievances. It is the function of the hearing examiner, who is able to view the witnesses' testimony first-hand, to determine the credibility of the witnesses and weigh the probative value of the evidence presented at the hearing. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98

(Final Order, 2004). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). The Board will not disturb the hearing examiner's credibility determinations absent the most compelling of circumstances. Id.

Here, we find no compelling reasons to reverse the Hearing Examiner's decision to credit the testimony of Dr. Mayo regarding the basis for Mr. Blount's discharge. Therefore, we must uphold the Hearing Examiner's conclusion that the District did not discharge the Complainant in violation of Section 1201(a)(1) and (3) of PERA.

Mr. Blount additionally alleges that the Hearing Examiner erred in concluding that he failed to prove an independent violation of Section 1201(a)(1) of PERA. The Board will find that an independent violation of Section 1201(a)(1) of PERA has occurred where, in light of the totality of the circumstances, "the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 (Final Order, 2001). The Hearing Examiner found, through the credible testimony of Dr. Mayo, that the District discharged Mr. Blount for misconduct. Because the District's decision was based upon a legitimate, non-discriminatory business reason, it cannot be said that Mr. Blount's discharge would tend to restrain, interfere with or coerce reasonable employes in the filing of grievances under PERA. Thus, the Hearing Examiner properly concluded that Mr. Blount failed to establish that the District violated Section 1201(a)(1) of PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Chris P. Blount are hereby dismissed, and the July 29, 2011 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman and James M. Darby, Member, this twentieth day of December, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.