

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL #776 :  
 :  
 v. : Case No. PERA-C-01-181-E  
 :  
 DAUPHIN COUNTY :

**FINAL ORDER**

Teamsters Local 776 (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on April 18, 2001 alleging that Dauphin County (Respondent) violated Sections 1201(a)(1), (3) and (4) of the Public Employee Relations Act (PERA) in discharging John Kiefer from his employment as a Probation Officer.

In its charge, Complainant alleges that on January 3, 2001 Mr. Keifer was terminated from his employment because of his union activity and in retaliation for a complaint and testimony in a 1992 charge of unfair labor practices.<sup>1</sup> In addition, Complainant attached a letter it received from Mr. Kiefer detailing fourteen alleged incidents of discrimination since his reinstatement on January 3, 1996.<sup>2</sup>

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<sup>1</sup> The 1992 charge, Dauphin County Peace Officers Association, Local 125 I.U.P.A. v. Dauphin County Court of Common Pleas, Terry Davis, PERA-C-92-135-E, involved claims of unfair labor practices arising from Mr. Kiefer's discharge because of union campaign activities. The charge resulted in Mr. Kiefer's reinstatement with back pay. Dauphin County Peace Officers Association, Local 125 I.U.P.A., 27 PPER ¶27,004 (Final Order, 1995).

<sup>2</sup> Mr. Kiefer set forth the following fourteen points:

1. In the past five years I have received only two evaluations. The first was from Supervisor Pottinger in May 1996 and the second was from Supervisor Markel in October 1997. In the last evaluation I was graded as satisfactory in every category. Since October 1997 I have not received any written feedback on my work performance however I have received verbal praise numerous times from Supervisor Shouder, the last occasion being mid December 2000 just a couple of weeks before I was terminated. The only other written evaluation I received was on March the 17<sup>th</sup> 2001 and was compiled by Supervisor Shrouder dated January 16, 2001 thirteen days after I had been discharged. In the last five years I have not received any discipline in any form whatsoever.
2. When I came back to work in January 1996, I was told by several sources that [Terry] Davis stated he was going to give me as many AIDS clients as he could in my caseload. As a result I believe over one third of my caseload was HIV positive.

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3. I was forced to take urine from my clients as well as other PO's clients on a continual basis. Davis had two other employees whose only duties were to pull urines. These two lab technicians were specially equipped and trained to safely perform this task where I was not. Davis intentionally assigned me to the smallest office in the building to isolate me and located next to the urine-pulling toilet. Taking urine from clients under these circumstances is a serious health risk.
  4. Being an employee of Dauphin County Probation and Parole for eleven years I received none of the automatic promotions that all of the other PO's received. All of the other Probation Officers with my tenure were Probation Officers two's or Probation Officer threes.
  5. All of the other Probation Officers had access to the use of a county vehicle (some on a take home basis). And even some of the Office Probation Officers (who did not go on the street as part of their job) were given take home vehicles. I was not allowed use of a county vehicle.
  6. Some of the other Probation Officers were given county equipment like flashlights, hats, tee shirts and vests. I was given none.
  7. During firearms qualification, I was harassed to the point that a supervisor would stand just behind me and berate my actions causing my shooting performance to suffer. Their harassment would continue when they would refuse to give me scored points that I obviously deserved.
  8. All of the other PO's were given training on a regular basis. I was given very little.
  9. I was forced to take fines and cost money from my clients even though there was a woman hired in the office to specifically perform this task. I believe this was an attempt by Davis to make potential trouble for me in that if the money did not get accredited properly to the clients account that it would give him an opportunity to file criminal charges against me. Knowing this, I felt I was being baited and I attempted to avoid this practice as often as possible.
  10. I was not included in the office Xmas party, the summer picnic or any other office activity. This was an attempt by Davis to isolate me from the other PO's. I was forced to pay into what Davis called the Flower Fund however when my Mother passed away in 1998, I never received so much as a sympathy card from the flower fund.
  11. I have a Master of Science Degree in Corrections however even though other PO's received pay incentives for advance education, I was denied the pay increase.

The Secretary of the Board issued a letter of May 2, 2001 advising Complainant that no complaint would be issued on the charge as filed. The Secretary determined that the retaliation claim based on a discharge on January 3, 2001 for filing a charge of unfair practices in 1992 was too remote in time to support the issuance of a complaint under Section 1201(a)(4). In addition, the Secretary determined that none of the fourteen incidents alleged by Mr. Keifer referred to any additional union activity on his part and therefore the Charge did not allege a timely nexus between Mr. Kiefer engaging in protected activity and his dismissal necessary for a complaint under Section 1201(a)(1) or (3) of PERA.

Mr. Kiefer, through counsel and on his own behalf, filed timely exceptions to the Secretary's decision denying the issuance of a complaint.<sup>3</sup> In his exceptions, Mr. Kiefer attempts to show a continuum of union activity since his reinstatement on January 3, 1996. He points out that in 1996, after his reinstatement, he filed a charge with the Board because of Respondent's failure to provide him with training given other bargaining unit employees.<sup>4</sup> In addition, he notes that Complainant and Respondent were litigating the validity of their collective bargaining agreement. The litigation was an appeal of an interest arbitration award regarding the validity of certain provisions

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12. I was required to supervise Community Service Clients when other PO's were not. This was in addition to my already established caseload responsibilities.
  13. I was not included in the "Probation Officer on Patrol Unit" where a PO rides along with a Police Officer. Even though Davis knew I was a Police Officer for ten years and a Parole Officer for eleven years, Davis did not do this because it is a PO two position and he would have had to promote me.
  14. Davis had a reason for choosing this particular time to terminate me. He waited five years while the Teamsters fought its case thru the courts. If he had tried to fire me before, he ran the risk of my situation being heard by an independent arbitrator and possibly being forced once again to reinstate me. By firing me now after the Teamsters had lost in its battle to be heard by the PA Supreme Court, Davis had no fears for he had only [Judge] Klienfelter [of the Dauphin County Court of Common Pleas] to convince.

<sup>3</sup> Complainant, Teamsters Local #776, chose not to pursue this matter further on behalf of Mr. Keifer.

<sup>4</sup> This charge was an action to enforce the Board's reinstatement order entered at PERA-C-92-135-E, resulting in a Proposed Decision and Order (PDO) of July 19, 1996 requiring Respondent to provide Mr. Keifer with firearms training.

of the award as they applied to the entire bargaining unit, not just Mr. Kiefer.<sup>5</sup>

After reviewing the Charge and Mr. Keifer's exceptions, the Board will sustain the Secretary's decision not to issue a complaint. Initially, we note that even if there were sufficient allegations of timely union activity, no complaint would have been issued because Complainant had failed to charge his employer with discrimination. Complainant named as the Respondent "Dauphin County (Court Appointed-Professional)," but did not allege that there was more than one respondent, and in the Specification of Charges named Terry Davis, the Director of Adult Probation and Parole, as responsible for Mr. Keifer's termination from employment.

County probation office employes, however, are judicial employes under the control of the Court of Common Pleas for purposes of hire, fire and direction. 42 Pa. C.S. §102; Sweet v. Pennsylvania Labor Relations Board, 457 Pa. 456, 322 A.2d 362 (1974); L.J.S. v. State Ethics Commission, 744 A.2d 798 (Pa. Cmwlth. 2000). In Teamsters Local 771 v. Pennsylvania Labor Relations Board, 760 A.2d 496 (Pa. Cmwlth. 2000), the Commonwealth Court held that a discrimination charge filed by a professional employe of the Lancaster County Court naming "Mark Dalton, Court Administrator, Lancaster County Commissioners (Court-Appointed Professional Employees)" as respondents and only naming the Lancaster County Commissioners in the Specification of the Charge, was not filed against the proper party since the Lancaster Court was the employer for purposes of hiring, firing and direction, and affirmed the Board's order dismissing the complaint.

The Charge filed by Complainant is identical to that in Teamsters Local 771, since nowhere does it identify the Dauphin County Court of Common Pleas as the employer responsible for Mr. Keifer's discharge from employment. Because the Charge alleged a discriminatory or retaliatory discharge from employment as a county probation officer, and since it did not identify the county court of common pleas as the respondent or employer, the Secretary did not err in not issuing the complaint against Dauphin County.

Further, the Secretary did not err in refusing to issue a complaint based on the merits as the facts alleged do not warrant the issuance of a complaint. There is no timely union activity alleged by Mr. Kiefer supporting the claim that he was terminated from employment for his protected activity under Section 1201(a)(1), (3) and (4) of PERA.

Mr. Keifer argues in his letter attached to the Charge, that Mr. Davis' proffered reasons for the discharge should be rejected, leaving only the inference of an unlawful motive arising from his reinstatement, which is supported by the fourteen incidents since 1996. However, a complainant's rejection of a proffered legitimate reason alone does not allow for such an inference, for a claim of discrimination or retaliation under PERA there must be some relevant

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<sup>5</sup> Board of Commissioners of County of Dauphin v. Dauphin County Adult/Juvenile Probation, Parole and Domestic Relations Employees, No. 1632 C.D. 1998 (Pa. Cmwlth. Filed April 8, 1999).

protected activity pointed to by the complainant that could be considered as a contributing factor in the employer's decision. See Scott Township Police Association v. Scott Township, 27 PPER ¶27206 (Final Order, 1996). Here, the only protected activity to arguably base the January 3, 2001 discharge would be the 1992 reinstatement action or the 1996 charge filed by Mr. Keifer to enforce his reinstatement. The remote timing, however, between the protected activity and adverse employment decision undercuts the inference of unlawful motive or that it was a factor in the adverse employment decision. Clarion Limestone Area Education Association, PSEA/NEA v. Clarion-Limestone Area School District, 25 PPER ¶25033 (Final Order, 1994). In certain circumstances, such as these, the adverse employment action may be so remote in time and so temporal to any protected activity that it may, as a matter of law, foreclose any inference of a causal relationship or unlawful motive. See Pennsylvania Labor Relations Board v. Rizzo, 344 A.2d 744 (Pa. Cmwlth. 1975); Blake v. United American Insurance Co., 37 F. Supp. 2d 997 (S.D. Ohio 1998) (holding that as a matter of law instances of whistle blowing may be too remote from adverse employment actions to support the causal connection necessary to establish a claim of retaliation).

Here, Mr. Keifer's discharge from employment was over five years after his latest alleged protected activity. The litigation between Respondent and Complainant is irrelevant to Mr. Kiefer's discharge because it did not involve any protected activity by him, but regarded the validity of an interest arbitration award as to employes of several divisions of the county court system. Furthermore, none of Mr. Keifer's fourteen incidents warrants an inference of unlawful motive for his January 3, 2001 discharge. While twelve of his claims alleged that he did not receive the same treatment as other Probation Officers following his reinstatement, only one of these, involving an incident where he did not receive a sympathy card from the "Flower Fund" is dated, and occurred in 1998.<sup>6</sup> That incident is two years after his last union activity and still more than two years before his termination, and there is no other indication in the Charge of a course of continuing discriminatory treatment because of union activity up to the time of his discharge. Because the timing is too remote, the Charge does not allege a basis for even an inference that Mr. Keifer's discharge from his employment as a Probation Officer on January 3, 2001, was because of his protected union activity in 1992 or 1996, and as such, the Secretary did not err in refusing to issue a complaint.

Since the Dauphin County Court of Common Pleas was not named as a Respondent or in the Specification of the Charges, the Charge was not filed against the proper party, and accordingly, the Secretary did not err in failing to issue the complaint. Further, because the protected activity alleged in the Charge was, as a matter of law, too remote in time to support a relationship to Mr. Keifer's discharge from employment, the Secretary did not err in refusing to issue a complaint

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<sup>6</sup> The only other incident that is dated alleged that Mr. Kiefer's last written review before termination was in 1997, and that a review was prepared after his termination. He does not allege, however, how this treatment was any different from other bargaining unit employes, and further indicates that from 1997 through 2000 he received favorable verbal comments about his work performance.

on that basis. After a thorough review of the exceptions to the Secretary's decision declining to issue a complaint, the Board shall dismiss the exceptions and affirm the Secretary's determination.

**ORDER**

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 are dismissed and the Secretary's decision not to issue a complaint is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this nineteenth day of June, 2001. 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.