

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 771 :
 :
 v. : Case No. PERA-C-98-403-E
 :
 LANCASTER COUNTY :

FINAL ORDER

On April 12, 1999, Lancaster County (County) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the proposed decision and order (PDO) entered on March 24, 1999. In the PDO, the hearing examiner concluded that the County violated Section 1201(a)(1) of the Public Employe Relations Act (PERA) when the court administrator denied a court-appointed employe's request for union representation at an investigatory interview. The hearing examiner also concluded that the County did not violate Section 1201(a)(3) or (5) of PERA. On May 3, 1999, Teamsters Local 771 filed a brief in response to the County's exceptions.

In the PDO, the hearing examiner concluded that court-appointed employes have the right to request union representation during investigatory interviews which they reasonably believe may result in imposition of discipline pursuant to the decision of the United States Supreme Court in NLRB v. J. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), which has been followed in the public sector in Pennsylvania. See, e.g., AFSCME Council 13 v. PLRB, 514 A.2d 255 (Pa. Cmwlth. 1986); City of Reading v. PLRB, 689 A.2d 990 (Pa. Cmwlth. 1997). The hearing examiner determined that the employe at issue here was denied her Weingarten rights in violation of Section 1201(a)(1) of PERA and directed the County to cease and desist from its unfair practice, post the Board's order and submit an affidavit of compliance to the Board.

In its exceptions, the County argues that the hearing examiner erred by directing it to remedy the alleged unfair practice where the matter complained of is action by the court administrator and not action by the county commissioners. The County argues that it has no authority to direct the court administrator in his supervision of court employes.

Upon review of the Union's unfair practice charge, we note that the only named respondents charged with commission of unfair practices were the county commissioners. However, the action complained of in the charge was taken by the court administrator and not by the commissioners. Therefore, the Union did not charge the proper party with the alleged unfair practice.

We note that in a caption, the Union references not only the county commissioners, but also the court administrator. However, the court administrator was not named as an additional respondent and the Board will only treat the parties specifically named by the charging party as respondents to the charge.

Moreover, even if the Union had named the court administrator as a respondent, he is not an employer. See, e.g., In the Matter of the Employes of Philadelphia County, 27 PPER ¶ 27236 (Proposed Decision and Order, 1996)(though clothed with significant authority to direct disputed employes, court administrator is not an employer, because his authority is derived from the courts). Rather, the "public employer" of court-appointed employes for purposes of Section 301(1) of PERA is the court of common pleas. Thus, the

court administrator is not liable as an individual for commission of alleged unfair practices in his capacity as a supervisory employe of the court of common pleas. Franklin Area School District, 30 PPER ¶ 30010 (Proposed Decision and Order, 1998); School District of City of Erie, 12 PPER ¶ 12227 (Proposed Decision and Order, 1981). Furthermore, although Section 1201 of PERA provides that employers may be held responsible for unfair practices committed by their agents, which could include unfair practices committed by supervisors, the Union did not name the Court of Common Pleas of Lancaster County as a respondent to its unfair practice charge, nor allege that it was responsible for the court administrator's denial of the employe's request for union representation. In sum, because the Union did not charge an unfair practice by the court of common pleas and the action complained of in the Union's unfair practice charge was not taken by the county commissioners, we must vacate the hearing examiner's finding of an unfair practice by the commissioners.

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions in part¹ and set aside the PDO consistent with the above discussion.

CONCLUSIONS

That CONCLUSIONS numbers 1 through 3 inclusive, and CONCLUSION number 5, as set forth in the proposed decision and order, are hereby affirmed and incorporated herein by reference and made a part hereof.

That CONCLUSION number 4 of the proposed decision and order is hereby vacated and set aside and the following additional conclusion is made:

6. That the County has not committed unfair practices in violation of Section 1201(a)(1) of PERA.

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 filed to the proposed decision and order in the above-captioned matter be and the same are hereby sustained in part, that the order on page 5 of the proposed decision and order be and the same is hereby vacated and set aside, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this seventeenth day of August, 1999. 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.

¹ In view of our disposition of this matter, we need not reach the County's remaining exceptions.