COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LISA R. CAGNEY AND OTTO-ELDRED EDUCATION ASSOCIATION	:	
v.	:	Case No. PERA-C-01-339-W
OTTO-ELDRED SCHOOL DISTRICT	:	

FINAL ORDER

On February 28, 2002, the Otto-Eldred Education Association (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated February 11, 2002. In the PDO, the Hearing Examiner found that the Otto-Eldred School District (District) did not engage in unfair practices in violation of Section 1201(a)(1), (2), (3), (4) and (5) of the Public Employe Relations Act (PERA) by transferring Lisa R. Cagney from an elementary school guidance counselor position to a teaching position within the same school after she filed a grievance alleging an unsafe work environment. On March 13, 2002, the District filed its brief in opposition to the Union's exceptions.

In August 1998, the District hired Ms. Cagney as its first guidance counselor to create and develop an internal guidance-counseling department. The District had previously contracted with, and currently contracts with, a private agency to provide guidance-counseling services for students. Initially, Ms. Cagney circulated a needs assessment survey to the faculty, the board of education, the administration and some students. Based on the objectives statistically favored in the survey returns and her own personal objectives, Ms. Cagney proceeded to develop a guidance-counseling program. During her first year with the District, Ms. Cagney also worked as an instructional support teacher and part-time math teacher in addition to her guidance counseling responsibilities. At the end of her first year, Ms. Cagney presented a report to the administration that outlined the guidance-counseling program and invited suggestions for improvement. Ms. Cagney received satisfactory evaluations for both her classroom and guidance counseling responsibilities throughout her years with the District.

During the 1999-2000 school year, her second year, Ms. Cagney was chronically ill and consequently used all ten of her sick days in that year. At the beginning of the 2000-2001 school year, Ms. Cagney became ill after the first week in her office and again used all ten sick days plus an additional day. On April 23, 2001, Ms. Cagney visited the school nurse because she was experiencing breathing difficulties. The school nurse advised her to visit a doctor. After work that day, Ms. Cagney visited her doctor who admitted her to the Bradford Regional Medical Center where she remained a full week. In compliance with her doctor's orders, Ms. Cagney did not return to work for the remainder of the school year, which ended on June 8, 2001.

On May 1, 2001, Robert Falk, the Superintendent, wrote a letter to the faculty and staff to address rumors concerning alleged illness-causing conditions at the elementary school. Mr. Falk's letter advised that a local physician assured him that there was no pattern of illness associated with the school's ventilation system or interior environment. In the letter, Mr. Falk also stated that an HVAC company, Building Controls and Services, Inc., inspected the ventilation system and reported that the system "had no visual evidence of mold, algae or fungal growth."

On May 14, 2001, the District was finalizing its plans to fill two vacancies in the elementary program that became available as a result of planned retirements. Terrence L. Stanley, the elementary school principal, believed that Ms. Cagney's teaching performance was a strong part of her record. Consequently, Mr. Falk, recommended to the school board that Ms. Cagney be transferred to an elementary teaching position to fill one of the vacancies.

On May 22, 2001, the Union filed a grievance on behalf of Ms. Cagney alleging that the District failed to provide a safe and hazard-free work place at the elementary school in violation of Article 5, Section 16 of the collective bargaining agreement. It is noteworthy that Ms. Cagney was already under consideration for assignment to the position prior to her filing the grievance. After the grievance was filed, Mr. Falk and the District's legal counsel discussed the possibility that Ms. Cagney's health problems would require the provision of "reasonable accommodations" under the Americans with Disabilities Act (ADA) and the possibility of moving her to another space without the same problems. Mr. Falk believed that a transfer to another space or building would be a "reasonable accommodation" under the ADA because the elementary classrooms did not have carpeting or the same HVAC system as the guidance offices, two elements that may have been causing Ms. Cagney's illness.

On June 1, 2001, Union and District representatives held a meeting concerning the grievance. Ms. Cagney, the District solicitor and the Union's attorney were also present at the meeting. During the meeting, Ms. Cagney expressed concern that poor air quality and environmental conditions inside the elementary school caused her to become ill. Also at the meeting, Mr. Falk explained his efforts to investigate heating, ventilating and air quality issues. Mr. Falk stated that he "was hurt and offended and very disappointed" by the grievance being filed because he had a good relationship with the Union and believed that he and the Union usually resolved matters informally by "mutual resolutions." This was the first grievance in his nine years as superintendent. Also during the meeting, the Union and the District discussed possible means of testing and providing air quality. The District also told the Union that it was willing to offer to move Ms. Cagney to a classroom in the District. The Union representative said they would take it under advisement, but there was really no interest in doing that. On June 25, 2001, the school board held a meeting and approved the elementary faculty assignments as recommended by the Superintendent. The June 25th meeting was the first opportunity for the school board to act on the superintendent's recommendations, which were offered before Ms. Cagney filed her grievance. The school board's June 25th approval of faculty assignments included the transfer

of Ms. Cagney to a teaching position in the second grade. On June 26, 2001 the District sent a letter to Ms. Cagney announcing the transfer.

In its exceptions, the Union contends that the Hearing Examiner erred in the following manner: (1) by failing to find that the District's reasons for transferring Ms. Cagney were pretextual; and (2) by concluding that the District presented convincing evidence that Ms. Cagney's transfer was based on legitimate purposes rather than in retaliation for filing a grievance.

As the fact finder, the Hearing Examiner is required to make only those findings that are necessary to support his decision; he is not required to summarize all the evidence, set forth facts or findings not necessary to the decision or make findings that would support another decision even if there is substantial evidence to support such a finding. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556, 561 (1975). Dormont Borough Police Ass'n and Dormont Desk Officers/Fire Apparatus Officers v. Dormont Borough, 32 PPER ¶ 32100 (Final Order, 2001); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); Police of the City of Chester, Fraternal Order of Police v. City of Chester, 18 PPER ¶ 18084 (Final Order, 1987); Jenkins v. Commonwealth, Dep't of Labor and Indus., Office of Vocational Rehabilitation, 18 PPER ¶ 18141 (Final Order, 1987). A hearing examiner's function is to resolve conflicts in evidence, make findings of fact from conflicting evidence and draw inferences from those findings of fact. In AFSCME, District Council 88 v. Warminster Township, 31 PPER ¶ 31156, 372 (Final Order, 2000), the Board stated that "often there is substantial evidence to support two different, conflicting findings, but it is sufficient that there is substantial evidence to support the Board's finding; it is insufficient on exceptions to argue that there is substantial evidence to support a contrary finding." Id.

A review of the PDO reveals that the findings of fact support the Hearing Examiner's conclusions and that the Hearing Examiner made all necessary findings of fact to support those conclusions. In AFSCME, District Council 84 v. Department of Public Welfare, Western Center, 18 PPER ¶ 18028 (Final Order 1986), the Board stated that "[i]t is the longstanding policy of the Board not to disturb on exception, [f]indings of [f]act made by a [h]earing [e]xaminer deciding issues of credibility of witnesses absent compelling reasons." AFSCME, 18 PPER at 88. The Board is not required to reveal or set forth conflicts in the evidence nor is it required to make findings that are contrary or irrelevant to the findings made by the examiner. AFSCME v. Philadelphia Office of Housing and Community Development, 31 PPER ¶ 31055 (Final Order, 2000). The Union has not presented any reasons, let alone compelling reasons, to warrant the interference with the Hearing Examiner's credibility determinations. Demeanor is the touchstone of credibility. Teamsters, Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). The Hearing Examiner, who is present to observe demeanor, functions to resolve conflicts in evidence and decide issues of credibility. Hand v. Falls Township, 19 PPER ¶ 19012 (Final Order, 1987). The Hearing Examiner, therefore, was entitled to resolve any conflicts in the evidence in favor of the District. The existence of conflicting evidence on an issue, which exists in most cases, does not, by itself, authorize the Board to re-evaluate the evidence. Accordingly, the Hearing Examiner did not err by excluding

the Union's proposed finding and/or by making contrary findings, which resolved the conflicts in evidence in favor of the District.

The Union also argues that the Hearing Examiner's finding in his analysis of the case, that the District based its decision to transfer Ms. Cagney on a legitimate business purpose and the conclusion that the District did not engage in unfair practices, are not supported by credible uncontradicted evidence. As an initial matter, it is noteworthy that the Union has not challenged any of the specific, enumerated findings of fact. To the extent that the District's "legitimate business purpose" constitutes a finding of fact, such findings must be supported by substantial, legally competent evidence, PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942); State System of Higher Education v. PLRB, 737 A.2d 313, 315, n.6; Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000). The law does not require that findings of fact be supported by "uncontradicted" evidence. As stated above, it is the function of the Hearing Examiner to resolve conflicts in evidence based on his credibility determinations, Falls Township, supra, and the District has not offered any reasons for interfering with the credibility determinations in this case. After carefully reviewing the record, we conclude that the Hearing Examiner properly resolved the evidentiary conflicts in favor of the District and, as such, substantial evidence exists to support the Hearing Examiner's finding that the District based its decision to transfer Ms. Cagney on a legitimate business purpose, (i.e. to fill a teaching vacancy for which she was qualified and to accommodate her propensity for respiratory illness under the ADA) and not in retaliation for filing the grievance. Further, the Hearing Examiner's unchallenged findings of fact support his legal conclusion that the District did not engage in unfair practices.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner.

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 dismissed; and that the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and L. Dennis Martire, Member, this sixteenth day of April, 2002. 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.