

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :  
 :  
 v. : Case No. PERA-C-03-219-E  
 :  
 LYCOMING COUNTY :

**FINAL ORDER**

The Teamsters Local 764 (Teamsters) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 28, 2006, claiming that the Hearing Examiner erred in issuing a Proposed Decision and Order on July 10, 2006, dismissing its Charge of Unfair Practices filed against Lycoming County (County) for alleged violations of Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA) arising from the reclassification of Roan Confer from Executive Assistant District Attorney to Assistant District Attorney. The County filed an answer and brief in opposition to the exceptions on August 21, 2006.

The operative facts found by the Hearing Examiner from the voluminous record are stated as follows. In January 2003, Mr. Confer requested that Michael Dinges, District Attorney, reassign him from the Executive Assistant District Attorney to Assistant District Attorney because he did not like the supervising responsibilities associated with the position of Executive Assistant District Attorney and wanted to get back into the courtroom. (Finding of Fact 13). On April 2, 2003, Mr. Dinges sent the following memorandum to Andrew Follmer, County Administrator, advising that effective March 1, 2003, Roan Confer would no longer hold the position of Executive Assistant District Attorney, and would be returning to the position of Assistant District Attorney:

Please be advised that effective March 1, 2003, Roan J. Confer, Jr., will no longer hold the position of Executive Deputy (sic) District Attorney. I will be utilizing Roan as an Assistant District Attorney, remaining at a pay grade 11. I have assumed the supervisory duties that he held. In order to reduce the caseload per attorney, I have placed Roan back in to the criminal case rotation. I believe it is more important to have him there than in the supervisory position, which is something that I can now do.

Roan has indicated that he is willing to do this and wanted to get back in to the court room to try cases. I have discussed this with him, and he understands that it is the Commissioner's position that he will receive a within-grade salary reduction. He has indicated to me that he intends to contest this reduction in pay.

(Finding of Fact 14; Respondent's Exhibits 6). On June 2, 2003, Mr. Dinges, wrote to the Commissioners asking that the Salary Board maintain Mr. Confer's current salary despite his reassignment, based on Mr. Confer's prior work experience. (Finding of Fact 16; Respondent's Exhibit 11). On June 5, 2003, at a meeting of the Salary Board, the Commissioners and Controller, over the objections of the designee of the District Attorney, voted to abolish the Executive Assistant District Attorney position, and create an additional Assistant District Attorney position for Mr. Confer at a salary of \$39,825.24, which salary amount reflects what Mr. Confer would have been earning without the approximately fifteen hundred dollar increase he received for assuming the supervisory duties of the Executive Assistant District Attorney position. (Finding of Fact 17; Respondent's Exhibit 12).

In a claim of discrimination under Section 1201(a)(1) and (3) of PERA, the complainant must establish that 1) the employe engaged in protected activity, 2) the employer knew of that activity, and 3) the employer took adverse action against the employe out of anti-union animus. St. Joseph's Hospital v. Pennsylvania Labor Relations Board, 473 Pa. 101, 373 A.2d 1069 (1977). The complainant bears the burden to prove, through substantial credible evidence, each element of the alleged unfair practice.

Teamsters Local #429 v. Lebanon County, 32 PPER ¶132,006 (Final Order, 2000). In that regard, substantial evidence is such relevant evidence as a reasonable mind would accept as adequate to support the finding. Pennsylvania Labor Relations Board v. Kaufmann Department Stores, Inc., 345 Pa. 398, 400, 29 A.2d 90, 92 (1942). On exceptions, the Board will sustain a hearing examiner's findings of fact where supported by substantial evidence in the record.

Based on the testimony presented, the Examiner found that with regard to the reduction in Mr. Confer's pay in connection with his reassignment as an Assistant District Attorney, the County Commissioners were unaware of Mr. Confer's union activities and therefore could not have discriminated against Mr. Confer in violation of Section 1201(a)(1) and (3) of PERA. The Teamsters argue that the Examiner's Findings of Fact 7, 8 and 9, and the determination that Teamsters failed to show that the County Commissioners and Salary Board knew of Mr. Confer's union activities, are in error.

In this regard, the Teamsters assert that the testimony of Debra Reed, a paralegal in the District Attorney's office, proves that the County knew of Mr. Confer's union activities. Specifically, Ms. Reed testified that Robert Noll, a County fiscal administrator, told her in a telephone conversation that there would be reprisals for Mr. Confer's union activities. However, Ms. Reed testified that she was unaware of the specific date this conversation allegedly took place. (N.T. 26). Moreover, citing page 748 of the transcript, the Examiner credited Mr. Noll's denial of knowledge of Mr. Confer's union activities. (PDO at 4). Pursuant to the Board's well established policy of deference to the hearing examiner's determinations regarding credibility of witnesses, the Board will not reverse such determinations in exceptions to the findings of fact set forth in the PDO. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). We find no compelling circumstances regarding Mr. Noll's testimony which warrant reversal of the Examiner's credibility determination on this record. In addition, although District Attorney Dinges was aware of Mr. Confer's organizing activities, he credibly testified that he did not advise the Commissioner's of Mr. Confer's involvement. (Finding of Fact 6).

The Teamsters also assert that the April 15, 2003 letter from Clifford A. Rieders, Mr. Confer's personal attorney, proves that the Commissioners had notice of Mr. Confer's union activities before the Salary Board action in June 2003. Mr. Rieders' letter of April 15, 2003, sent to the Commissioners, with copies to the County solicitor, District Attorney Dinges and Mr. Follmer, stated

Please be advised that I have been contacted by Roan J. Confer Jr. concerning retaliation against him in connection with submission of cards to the Pennsylvania Labor Relations Board to allowed (sic) Teamsters Local Union #764 to represent Roan and others in labor negotiations with the county commissioners.

(Respondent's Exhibit 7).

While County Commissioners, Joseph Neyhart and Rebecca Burke, testified they were unaware of Mr. Confer's organizing activities, (Findings of Fact 7 and 8), Attorney Reider's letter of April 15, 2003, received by the Commissioners, is quite clear and unmistakable. The letter links Mr. Confer to the submission of a union authorization card to the Board for Teamsters to be his representative, and as aptly noted by the Examiner "what is that ... if not union activity." (N.T. 718); Pennsylvania Labor Relations Board v. Northeastern Educational Intermediate Unit, 18 PPER ¶18,203 (Final Order 1987). Indeed, Mr. Neyhart became somewhat equivocal in his testimony about whether he had prior knowledge of Mr. Confer's union activities after his recollection was refreshed by reviewing Mr. Rieders' correspondence. (N.T. 717-719).

However, at best this proves that the Commissioners and Salary Board had knowledge of Mr. Confer's protected activities as of April 15, 2003. In his April 2, 2003 correspondence, District Attorney Dinges advises that at least as of April 2, 2003, the

County Commissioners (a majority of the Salary Board<sup>1</sup>) had already taken the position to reduce Mr. Confer's salary in connection with his reassignment from the Executive Assistant District Attorney back to an Assistant District Attorney. After a thorough review of the record, we agree with the Examiner that there is no substantial evidence of record that the Commissioners were aware of Mr. Confer's protected union activities as of April 2, 2003, when the Commissioners had already decided that a reduction in Mr. Confer's salary would occur as a result of the reassignment. Accordingly, after a thorough review of the exceptions and all matters of record the Hearing Examiner did not err in concluding that the Teamsters failed to prove discrimination under Section 1201(a)(1) and (3) 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 exceptions filed by the Teamsters Local 764 are hereby dismissed, and the July 10, 2006 Proposed Decision and Order, be and the same is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this seventeenth of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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L. DENNIS MARTIRE, CHAIRMAN

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ANNE E. COVEY, MEMBER

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JAMES M. DARBY, MEMBER

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<sup>1</sup> Finding of Fact 11.