COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

JEANNE M. WALTER

:

v. : Case No. PERA-C-04-391-E

:

CUMBERLAND VALLEY SCHOOL : DISTRICT, ET. AL. :

FINAL ORDER

Jeanne M. Walter (Walter) filed exceptions with the Pennsylvania Labor Relations Board (Board) on June 7, 2006, challenging the Proposed Decision and Order (PDO) of May 18, 2006, in which it was found that Cumberland Valley School District (District) did not violate Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA) when it transferred Walter from a teaching position at the high school to a teaching position at the middle school. After the granting of additional time for the filing of a brief in support of the exceptions, Walter did not file a brief in support of the exceptions and the District did not file a response to the exceptions.

The factual background is briefly stated as follows: Walter is currently an English teacher at the Eagle View Middle School. Prior to her transfer to the middle school for the 2004-2005 school year, Walter was an English teacher at the Cumberland Valley High School for 30 years. (Findings of Fact 2 and 3). In January of 2004, a student filed a written complaint against Walter and she filed a grievance to have the letter removed from her file. This grievance proceeded to level III (Superintendent level) and was resolved in April of 2004, when the Superintendent sent Walter a letter informing her that the letter would be removed from her file. (Findings of Fact 5-15). On April 22, 2005, an eighth grade teacher wrote to the Superintendent requesting maternity leave for the 2004-2005 school year. (Finding of Fact 16). The District decided to assign Walter to fill this vacancy because of her experience and qualifications and because eighth grade is one of only three grades in which the Pennsylvania State Assessment test is given, the results of which are monitored pursuant to the Federal No Child Left Behind Act and are published in the newspaper. (Findings of Fact 19-21). Walter also filed a grievance over this transfer, which was taken to the last level of the grievance procedure available under the contract and was denied. (Finding of Fact 31).

On August 20, 2004, Walter filed a Charge of Unfair Practices alleging that her transfer to the middle school was in retaliation for protected activity. A complaint was issued and hearings were held on January 31, 2005 and April 29, 2005. In the May 18, 2006 PDO, the Hearing Examiner found that Walter failed to prove that her transfer was a retaliatory measure for her use of the grievance process. Accordingly, the Hearing Examiner concluded that the District did not violate Section 1201(a)(1) and (3) of PERA.

Walter filed numerous exceptions to the Hearing Examiner's PDO. However, at the core of Walter's exceptions is a challenge to the Hearing Examiner's findings and credibility determinations with regard to the District's motivation for transferring her to the middle school. Generally, however, the findings of the hearing examiner will be sustained if they are supported by substantial evidence. Substantial evidence is such "`relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942) (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1938)). In making relevant findings of fact, the hearing examiner may choose to credit or discredit any testimony or evidence, in whole or in part. Pennsylvania State Corrections Officers Association v. Commonwealth, Department of Corrections Pittsburgh SCI, 34 PPER ¶ 134 (Final Order, 2003). In addition, absent compelling reasons in the record, the Board will not disturb the hearing examiner's credibility determination. Fraternal Order of Police, Lodge No. 85 v. Commonwealth of Pennsylvania, 18 PPER ¶18093 (Final Order, 1987).

An employer commits an unfair practice under Section 1201(a)(1) and (3) when it discriminates against an employe for activity protected by PERA. Generally, to sustain the burden of proving discrimination under St. Joseph's Hospital v. Pennsylvania Labor Relations Board, 473 Pa. 101, 373 A.2d 1069 (1977), the complainant must prove that: 1) the employe engaged in protected activity, 2) the employer knew of that activity and 3) the employer took action against the employe because of that union activity. St. Joseph Hospital, supra.

The Hearing Examiner found that Walter engaged in protected activity by utilizing the grievance process and that the District was aware of this activity. However, with regard to the third element of the St. Joseph's test, the Hearing Examiner concluded that the District was not motivated by anti-union animus when it transferred Walter. This conclusion is supported by the evidence. To support this conclusion, the Hearing Examiner chose to credit the District's witnesses, who testified that their motivation for transferring Walter was because they needed an experienced, qualified replacement for the eighth grade reading teacher and that, in their opinion, Walter was the most qualified. Because Walter has not presented compelling reasons to disturb the Hearing Examiner's credibility determinations, the Board concludes that Walter's exceptions to the PDO should be dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that the District did not engage in unfair labor practices in violation of 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 the exceptions filed to the Proposed Decision and Order be and the same are hereby dismissed; and that the Proposed Decision and Order be and the same is hereby made absolute and final.

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

PENNSYLVANIA	LABOR	RELATIONS	BOARD
L. DENNIS MAR	RTIRE,	CHAIRMAN	
ANNE E. COVEY, MEMBER			
JAMES M. DARI	 BY, MEN	 MBER	