COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CAMERON COUNTY EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION PSEA/NEA	:	
v.	:	Case No. PERA-C-04-528-W
CAMERON COUNTY SCHOOL DISTRICT	:	

FINAL ORDER

The Cameron County Educational Support Personnel Association, PSEA/NEA (Association), filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on February 16, 2006, challenging a Proposed Decision and Order (PDO) issued January 30, 2006, dismissing the Association's Charge of Unfair Practices alleging that the Cameron County School District (District) violated Section 1201(a)(1), (2), (3), (4) and (9) of the Public Employe Relations Act (PERA). Under separate cover, the Association filed a supplemental brief also on February 16. Following a grant of an extension of time, the District filed a brief in opposition to the exceptions on March 23, 2006.

The pertinent facts of this case may be summarized as follows. Jean Skinner, a high school clerk employed by the District, met with the Association and employes to discuss unionizing the District's nonprofessional employes. (Findings of Fact 3 and 5). An election was held, and on June 13, 2002, the Board dismissed the District's exceptions and certified the Association as the bargaining representative for the nonprofessional employes of the District. (Finding of Fact 4). Skinner was elected president of the Association and served in that capacity from 2002 through 2004. (Finding of Fact 6).

The District and Association commenced negotiations for an initial contract in December 2002. (Finding of Fact 7). Skinner was present at all bargaining sessions, but the Association's spokesperson for negotiating was Terra Begolly, a PSEA Uniserve Representative. (Findings of Fact 10 and 11). There was no strike during the negotiations (Finding of Fact 9), and in November 2004, both the District and Association accepted a fact-finder's report and thereafter executed a collective bargaining agreement in December 2004. (Finding of Fact 8).

In April 2004, Skinner applied for the vacant position of secretary to the high school principal, a duty she previously performed on a fill-in basis. (Findings of Fact 15 and 20). There were ten applicants for the position, who were screened through an interview committee comprised of the superintendent, high school principal, and four members of the school board. (Findings of Fact 18 and 19). Following her interview with the committee, Skinner was not recommended for the position. Instead, another candidate, who was not previously employed by the District, received the unanimous recommendation of the interview committee, and was selected to fill the vacancy as secretary to the high school principal. (Finding of Fact 20). Skinner was not advised why she was not selected for the position. (Finding of Fact 21).

The Association filed a Charge of Unfair Practices on October 26, 2004 arguing that Skinner's non-selection for the position of secretary to the high school principal was discriminatory in violation of Section 1201(a)(1) and (3) of PERA.[1] A complaint was issued, and following a hearing on November 10, 2005, the hearing examiner found and concluded that the Association failed to prove an unlawful discriminatory motive and issued a PDO rescinding the complaint and dismissing the charge.

The Association argues in its exceptions to the PDO that the hearing examiner erred in failing to adopt the Association's proposed findings. Generally, the hearing examiner

[1] The Association also charged violations of Section 1201(a)(2), (4) and (9), but the facts alleged supported no such claim.

must set forth those findings that are necessary to support the conclusion reached, and need not render all possible findings on all the facts presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). Upon review of the PDO and the Association's proposed findings, the Board finds that all findings necessary to support the conclusions to decide this matter have been stated. Those findings of fact are based on substantial evidence in the record, which is such relevant evidence as a reasonable mind would accept as adequate to support the conclusions. Pennsylvania Labor Relations Board v. Kaufmann Dept. Stores, Inc., 345 Pa. 398, 29 A.2d 90 (1942).

The Association argues that the hearing examiner's finding that "Skinner was not particularly vocal during the negotiations" is not supported by substantial evidence in the record. The Association's claim is based on the testimony of Carl Mitchell, the District's business manager and school board secretary, who did not recall Skinner's being vocal during the bargaining sessions. (N.T. 50). However, Skinner herself testified that Ms. Begolly was the Association's bargaining spokesperson (N.T. 15), and Ms. Begolly testified that she did the talking at the bargaining table, although Skinner was present. (N.T. 26). Accordingly, the hearing examiner's finding that Skinner was not very vocal during negotiations is supported in the record and will not be disturbed.

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 the employe engaged in protected activity, that the employer knew of that activity and took action against the employe because of that union activity. St. Joseph Hospital, supra. For purposes of proving discrimination, it is the anti-union motive that creates the unfair practice. Pennsylvania Labor Relations Board v. Ficon, Inc., 434 Pa. 383, 254 A.2d 3 (1969). To support its claim that the District refused to promote Skinner out of an unlawful discriminatory motive, the Association argues that the hearing examiner should have found that the District had opposed Skinner's inclusion in the bargaining unit, that Skinner was instrumental during the negotiations for the initial contract, and that bargaining with the District was antagonistic.

With regard to finding that the District had opposed Skinner's inclusion in the bargaining unit, this finding does not alter the conclusion. The record reflects that the District challenged Skinner's membership in the bargaining unit because she performed confidential duties on a limited basis. The Board dismissed those exceptions finding that her limited involvement in confidential duties, did not justify her removal from the bargaining unit. The reasoning for the District's challenge to Skinner's bargaining unit status, that she was confidential, does not, on this record, support the inference that it later would discriminate against her when she applied for the same non-bargaining unit confidential position.

The Association claims that the Board should infer the District's discriminatory intent because Skinner was instrumental during the negotiations for the initial contract with the District. However, as noted above, the substantial evidence of record only supports the fact that during bargaining sessions with the District, Skinner was present but not vocal. In fact, in its exceptions, the Association concedes that Skinner was instrumental and vocal "whenever the union caucused or had its own meetings," outside of the presence of the District. This finding does not support that the District in any way knew of Skinner's protected activity that occurred out of its presence. The Association's proposed finding that Skinner was instrumental to the Association during its negotiations, beyond the facts found by the hearing examiner in the PDO, would not alter the conclusion. Page's Department Store, supra.

Further, the Association's claim that a finding should have been made that bargaining with the District for the initial contract was antagonistic and difficult is not borne out by the record. Based on the facts that the District and Association were negotiating for an initial contract, with all issues on the table, that there was no strike, and both parties accepted the 2004 fact finding report, the hearing examiner rejected the Association's proffered testimony that negotiations were unreasonably antagonistic. Credibility determinations are a matter for the hearing examiner, and absent compelling circumstances, will not be disturbed on exceptions to the Board. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order,

2004). There are no such compelling circumstances in this record. Having rejected the Association's testimony that bargaining was antagonistic, the hearing examiner did not err in declining to make a finding inconsistent with that credibility determination.

Upon review of the record, we agree with the hearing examiner that the Association failed to establish the key element of motive to sustain its claim of discrimination under Section 1201(a)(1) and (3) of PERA. An inference of anti-union motivation must be based on more than a mere suspicion. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974). At best, the Association's evidence only raises a suspicion about the District's motive. No reasonable inference of an anti-union motive can be drawn from the District's challenge to the bargaining unit certification, or from the Association's perception that bargaining was unreasonably antagonistic and difficult. Moreover, Dr. Stephen Bugaj, Superintendent, and member of the interview committee, credibly testified that neither Skinner's status as union president, nor her union involvement, played a part in the selection process.[2]

After a thorough review of the exceptions and all matters of record, the Association failed to sustain its burden of establishing an unlawful discriminatory motive for the District's non-selection of Jean Skinner for the position of secretary to the high school principal, necessary to prove its charge under Section 1201(a)(1) and (3) of PERA,[3] and accordingly the hearing examiner did not err in dismissing the Association's charge of unfair practices.

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 Cameron County Educational Support Personnel Association, PSEA/NEA are hereby dismissed, and the January 30, 2006 Proposed Decision and Order be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of April, 2006. 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.

[2] Furthermore, we note that Dr. Bugaj testified that the reason the interview committee did not recommend Skinner to the school board was because it was a "terrible interview". (N.T. 42). Even Skinner acknowledged that there was a "heated discussion" during the interview regarding the pay and benefits Skinner would receive if selected for the position. (N.T. 53). The record simply fails to support that it was Skinner's union activity, and not her interview, which caused her non-selection for the position of secretary to the high school principal. PSSU, Local 668, SEIU v. Warren County, 36 PPER 171 (Proposed Decision and Order, 2005).

[3] Because the Association failed to establish a *prima facia* case of discrimination, the burden of proof to establish a non-discriminatory reason was never on the District, Teamsters, Local #764 v. Montour County, 35 PPER 147 (Final Order, 2005), and therefore the Board need not address the Association's exceptions challenging the hearing examiner's refusal to draw an inference from the lack of testimony from the school board.