

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 v. : Case No. PERA-C-06-197-E
 :
 MUNICIPALITY OF BETHEL PARK :

PROPOSED DECISION AND ORDER

On May 5, 2006, Teamsters Local 205 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Municipality of Bethel Park (Municipality or Employer) alleging that the Municipality committed unfair practices in violation of Sections 1201(a)(1) and (3) of the Public Employe Relations Act (Act).

On May 25, 2006, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties, and July 13, 2006, in Pittsburgh was assigned as the time and place of hearing, if necessary.

The hearing was necessary, but was continued to July 17, 2006, at which time the hearing was held before Thomas P. Leonard, Esquire, a hearing examiner of the Board. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the Municipality of Bethel Park is a public employer within the meaning of Section 301(1) of the Act. (N.T. 7)
2. That Teamsters Local 205 is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 7-8)
3. That the Municipality employs 29 school crossing guards. Among these are Patricia Roell, Carl Roell and Jann Freund. (N.T. 71-72)
4. That the school crossing guards are supervised by the Municipality's police department. Lieutenant David Rogan and Sergeants Russ Posch and Bob Schoenberger are responsible for supervising the guards. Lt. Rogan makes assignments and transfer recommendations to the Chief of Police. (N.T. 92, 128, 129)
5. That in December 2005, Ms. Roell, Mr. Roell and Jann Freund met with Teamsters Local 245 representative Jim McClelland to obtain help representing the employes. (N.T. 20, 23)
6. That Ms. Roell sought the support of other school crossing guards in joining the Teamsters. (N.T. 20-22)
7. That from 2002 until on or about early 2006, Ms. Roell worked at Hillcrest Christian Academy High School site as a school crossing guard. The site is on a very busy street, Bethel Church Road. (N.T. 72-75)
8. That on or about October 28, 2004, Sergeants Posch and Schoenberger sent Patricia Roell a memorandum warning her about her conduct at the school crossing site, specifically, her use of foul and coarse language. (N.T. 74, Bethel Park Exhibit 2)

9. That on or about January 3, 2006, Sergeant Posch recommended to Lt. Rogan that Ms. Roell be terminated or transferred because she had been adding time to her schedule without approval of her supervisor. (N.T. 77-78, Bethel Park Exhibits 3 and 4)
10. That on or about February 20, 2006, Ms. Roell was informed by Bob Schoenberger and Russ Posch that she would not be working at that site. The transfer caused a 1.5 hours a day reduction in her time. (N.T. 17, 26, 93-94, 95-96)
11. That Sgt. Posch made the recommendation because of complaints that she was leaving her post when students were getting off the bus and his observations of the problem. (N.T. 72-76, 80-90 Bethel Park Exhibit 4)
12. That Jann Freund was hired as a school crossing guard in May, 2005. (N.T. 42)
13. That Ms. Freund was assigned to the Ben Franklin School. (N.T. 44)
14. That on or about April 26, 2006, Ms. Freund became involved with a group of crossing guards who were seeking the help of the Teamsters to represent them. (N.T. 48, 57)
15. That on May 1, 2006, Ms. Freund received a letter dated April 28, 2006 from the Sergeants Posch and Schoenberger that she had exceeded the allotted time in the way she recorded the time she worked each day by 0.5 hours a day. The Department directed her to reduce the number of hours she was claiming and follow the Department policy on recording hours. (N.T. 49, 52, 106-110, Union Exhibit 1, Bethel Park Exhibits 8, 9 and 10)
16. That Carl Roell is a school crossing guard employed by the Municipality. He began employment in March 2003. (N.T. 58)
17. That when Mr. Roell was first hired, he alternated assignments at different posts. Then, in September 2004, he was assigned to St. Valentine's school. He worked both the morning and afternoon assignments. (N.T. 59)
18. That on or about February 9, 2006, the police department reassigned Mr. Roell from St. Valentine's School to the corner of Main and Cedar Streets. (N.T. 61-62, Union Exhibit 2)
19. That Mr. Roell's reassignment resulted in his hours being reduced from 5 hours a day to 3 1/4 hours a day. (N.T. 62)
20. That St. Valentine's School is the busiest school crossing location in the Municipality. (N.T. 66)
21. That Sergeants Posch and Schoenberger recommended the transfer of Carl Roell from the St. Valentine's site because they believed that he was putting the children in an unsafe situation and because of complaints from motorists that he was yelling at them. (N.T. 98-100, 129, Bethel Park Exhibit 7)
22. That Lieutenant Rogan transferred Mr. Roell to Cedar and Main Streets because he believed it would cause him less stress since the area was more residential with lighter traffic. (N.T. 130)
23. That Lieutenant Rogan was not aware of union activity of any of the three crossing guards when he made his decision to reassign the Roells or to correct the hours claimed by Ms. Freund. (N.T. 94-95, 103-104, 133-134)

DISCUSSION

The Union's charge of unfair practices alleges that the Municipality violated Sections 1201(a)(1) and 1201(a)(3) of the Act by transferring Carl J. Roell, Patricia M. Roell and Jann L. Freund from their five hour day shift as school crossing guards to a three and one-half hours per day shift because of their activity in seeking the support of a union.

The Municipality's defense is that its police department managers who decided to reassign the school crossing guards had no knowledge of the union activities of the employees. Furthermore, the Municipality made the transfers for reasons of safety that had nothing to do with the crossing guards' union activity.

In order to sustain a charge alleging a discriminatory job transfer, the complainant must prove the affected employee was engaged in protected activity, that the employer knew of the protected activity, and that the employer made the job decision because of the employee's exercise of the protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). In order to sustain a charge of discrimination under Section 1201(a)(3) of the Act the complainant must prove that the employee engaged in protected activity, that the employer was aware of that protected activity, and that but for the protected activity the adverse action would not have been taken against the employee. Saint Joseph's Hospital, 473 Pa. 101, 373 A.2d 1069 (1977). The complainants must establish these three elements by substantial and legally credible evidence. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974). St. Joseph's Hospital, supra. In a charge of discrimination it is the employer's motivation which creates the offense. Perry County v. PLRB, 364 A.2d 898 (Pa. Cmwlth. 1994)

The Union proved the first element, the exercise of protected activity by the three school crossing guards were engaged in protected activity. The three guards testified that they met with the Teamsters representatives and then went out and sought support from other employees.

However, the Union did not prove the second element, employer knowledge or the third element, anti-union motivation for the action. The Municipality's head of the crossing guards, police department Lieutenant David Rogan, testified that he did not know about the union activity of the school guards who were reassigned. As for motivation, Rogan testified credibly that his reasons for reassigning Ms. Roell and Mr. Roell were related to the safety of the students and unrelated to the union activity of the three guards. His reason for reducing the hours of Ms. Freund was to make her hours consistent with the Municipality's policy.

Based on the lack of proof of the second and third elements of the St. Joseph's test, it must be concluded that the union has not proven that the crossing guards' assignments were made for discriminatory reasons that violated the Act.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Municipality is a public employer within the meaning of Section 301(1) of the Act.
2. That the Union is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the Municipality has not committed unfair practices within the meaning of Section 1201(a)(1) and 1201(a)(3) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

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

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this twenty-second day of November, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner

November 22, 2006

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BETHEL PARK MUNICIPALITY
Case No. PERA-C-06-197-W

Enclosed is a copy of the proposed decision and order issued in the above-captioned matter.

Sincerely,

THOMAS P. LEONARD
Hearing Examiner

Enclosure

cc: Municipality of Bethel Park