

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :
 :
 v. : Case No. PERA-C-05-440-E
 :
 MILTON REGIONAL SEWER AUTHORITY :

PROPOSED DECISION AND ORDER

On September 23, 2005, Teamsters Local 764 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) against the Milton Regional Sewer Authority (Authority). By letter dated October 26, 2005, the Secretary of the Board informed the Union that further specifications were required to process the charge. The Union then amended its charge to allege that the Authority violated Section 1201(a)(1), (3) and (5) of the Public Employe Relations Act (PERA). On December 20, 2005, the Secretary issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on March 14, 2006. On January 5, 2006, the Authority filed an answer to the complaint. Pursuant to several requests by the parties, the hearing was continued to July 17, 2006. On that date, all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties forwarded post-hearing briefs to the Board on September 8, 2006.

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

FINDINGS OF FACT

1. The Authority is a public employer for purposes of PERA.
2. The Union is an employe organization for purposes of PERA.

3. On September 6, 2005, the Union filed a grievance over the discharge of Patricia Pfleegor, who was an employe of the Authority. On that same date, Union Steward Roy Keiser sent the following information request to George Myers, who is the superintendent of the Authority:

"I hereby request copies of any and all documentation used to decide, or used as evidence in the termination of Patricia Pfleegor.

I also request permission on Authority time to conduct an investigation into this matter and reserve the right to conduct interviews with any persons who may be relevant to this matter"

(N.T. 14-16, 33-36; Joint Exhibit 2)

4. By letter dated September 13, 2005, Superintendent Myers responded to Keiser's information request as follows:

"You are permitted to conduct interviews, on the Milton Regional Waste Water Treatment Plant premises, of any WWTP employee that voluntarily agrees to be interviewed. However, any such interviews or investigation of the grievance filed on behalf of Patricia Pfleegor may not be conducted during work hours of either the interviewer or the person being interviewed.

Additionally, your request for documents will be processed in the near future."

(N.T. 20-21; Joint Exhibit 3; emphasis in original)

5. Union Steward Keiser wished to interview Ronda Bogle, who was Pfleegor's immediate supervisor, concerning matters that were related to Pfleegor's performance of her job as sewer billing clerk. The Authority did not advise Keiser that he could not interview Bogle. Rather, Bogle declined to be interviewed. (N.T. 18-24, 38-39)

6. Jimmy Little is a business agent for the Union and asked the Authority's legal counsel whether he could interview Bogle. The Authority's legal counsel made reference to the letter from Superintendent Myers and stated that Bogle was not interested in being interviewed. (N.T. 44, 49-51)

7. On September 15, 2006, the Authority provided the Union with the documents that it had requested regarding Pfleegor's termination. (N.T. 60)

DISCUSSION

The Union alleges that the Authority violated Section 1201(a)(1), (3) and (5) of PERA by not producing an employee's supervisor (Ronda Bogle) for an interview by the Union after the Union grieved the employee's discharge.¹ Citing Rose Tree Media School District, 32 PPER ¶ 32116 (Final Order, 2001), the Union contends that it is entitled to all information necessary to process a grievance. The Union contends that it needed the opportunity to conduct a personal interview with the employee's supervisor to "assess her credibility and the trustworthiness of her set of facts" (Union's brief at 6), and to thereby determine whether the grievance should be arbitrated. The Authority argues that the unfair practice charge should be dismissed because it complied with its obligations under the law and the applicable collective bargaining agreement.

Initially, the charge under Section 1201(a)(3) of PERA must be dismissed because the Union has failed to prove that the Authority was motivated by anti-union animus in declining to direct its supervisor to submit to an interview with the Union. See St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977)(complainant in discrimination case must prove that employer was motivated by anti-union animus). The remaining issue then is whether an employer has the duty under Section 1201(a)(1) and (5) of PERA to direct its supervisors to submit to questioning by a union when the union files or contemplates filing a grievance.

As the Union conceded at the hearing (N.T. 6-7), there are no PLRB decisions on point requiring an employer to direct its supervisors to submit to questioning by the union concerning a pending or potential grievance. Review of federal caselaw also discloses no decisions by the National Labor Relations Board or federal courts imposing such an obligation. Nor am I persuaded that the employer's duty to provide information relevant to processing of a grievance should include the obligation to require its supervisors to participate in a pre-arbitration interview with the union. Indeed, under federal caselaw adopted by the PLRB, an employer need not provide the union with witness statements, even where the witnesses decline to be interviewed by the union. See Anheiser-Busch, Inc., 237 NLRB 982, 99 LRRM 1174 (1978), cited with approval in Commonwealth, Department of Corrections, 19 PPER ¶ 19039 (Final Order, 1988). Although an employer may not deny a union access to witnesses, Commonwealth, Department of Corrections, 21 PPER ¶ 21003 (Proposed Decision and Order, 1989), the Authority did not do so here. Rather, the supervisor whom the Union sought to interview declined to participate in such an interview. Therefore, the charge of unfair practices must be dismissed.

CONCLUSIONS

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

1. The Authority is a public employer for purposes of Section 301(1) of PERA.
2. The Union is an employe organization for purposes of Section 301(3) of PERA.

¹ At the hearing, the Union conceded that it had received the documents referenced in its unfair practice charge, and withdrew the portion of the charge concerning the document request (N.T. 3-4).

3. The Board has jurisdiction over the parties hereto.

4. The Authority has not committed unfair practices in violation of Section 1201(a)(1), (3) or (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, 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 this first day of November, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

November 1, 2006

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MILTON REGIONAL SEWER AUTHORITY
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Enclosed please find a copy of the proposed decision and order issued in the above-captioned matter.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Milton Regional Sewer Authority
Jimmy W. Little