

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :  
 :  
 v. : Case No. PERA-C-05-431-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 (Board) alleging that the Milton Regional Sewer Authority (Authority) had engaged in unfair practices under the Public Employe Relations Act (PERA or Act). By letter dated October 26, 2005, the Secretary of the Board informed the Union that it must specify the exact provisions of the Act that it believed were violated. The Union then filed an amended charge alleging that the Authority had violated Section 1201(a)(1), (3) and (5) of PERA. On December 21, 2005, the Secretary issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on March 14, 2006. The Authority filed an answer to the complaint on January 6, 2006. At the request of the Authority, the hearing was continued to April 24, 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.<sup>1</sup> Both parties filed post-hearing briefs on or before June 9, 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. Patricia Pfleegor began working for the Authority on June 1, 2003. She had previously worked for Milton Borough (Borough). (N.T. 12-13)
4. Pfleegor was a member of the Union's three-person bargaining team in negotiations with the Authority that commenced around February 2004. The negotiations resulted in a collective bargaining agreement (CBA). Pfleegor was one of the persons who signed the CBA. (N.T. 17-18, 31-32)
5. Pfleegor served as a steward for the Union in 2004, but not in 2005. (N.T. 111)
6. During a bargaining session in March 2004, Pfleegor was involved in a heated discussion with a member of the Authority's board (Mr. Callenberger). The parties had discussed use of temporary employes. Pfleegor stated that she would prefer if the Authority would allow employes to work overtime if necessary to complete their duties. She stated that there were times when she found it necessary to work during her lunch break. Callenberger advised Pfleegor that maybe she was not performing her job correctly because Pfleegor's supervisor (Ronda Bogle) had stated that she gave Pfleegor forty hours to do her work, and that was enough time to get it done. Pfleegor replied to Callenberger, "I really don't care what you think because I am doing my job right and nobody's complaining about it." (N.T. 18-19, 36-37)

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<sup>1</sup> At the hearing, the examiner deferred the charge under Section 1201(a)(5) of PERA to grievance arbitration, without objection from the Union, because the parties have arbitrated a grievance that was filed over the same subject matter as the unfair practice charge (N.T. 9). See Pine Grove Area School District, 10 PPER ¶ 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979).

7. Callenberger telephoned Pfleegor the day after the March 2004 bargaining session and apologized to her. Pfleegor informed Callenberger that she was not offended by his remarks. (N.T. 36-37)

8. On the day after the March 2004 bargaining session, Authority Superintendent George Myers informed Pfleegor that she should not have addressed Board Member Callenberger in the manner that she did. (N.T. 20, 37-38, 102-103)

9. Pfleegor was not disciplined for her conduct at the March 2004 bargaining session. (N.T. 24)

10. Callenberger no longer serves on the Authority's board. He left the board before 2005, and was not on the board when Pfleegor was terminated. (N.T. 24)

11. On July 21, 2004, Pfleegor received a verbal warning for accepting cash from an Authority customer for payment of a sewer bill. When she accepted the cash payment, Pfleegor was aware of the Authority's rule prohibiting acceptance of cash payments. Pfleegor also received a written warning for alleged insubordinate conduct when discussing the matter with Authority Superintendent Myers. (N.T. 21-22, 35-36, 39-40, 67-68, 134-135; Authority Exhibit 4)

12. Pfleegor filed a grievance over the discipline that she received on July 21, 2004, and the matter proceeded to grievance mediation. The grievance mediator upheld the verbal warning because it was undisputed that Pfleegor violated Authority policy by accepting cash for payment of a sewer bill. However, the mediator found that the verbal warning should be the only discipline imposed because there was insufficient evidence of conduct warranting a second warning in writing. (N.T. 41-42; Authority Exhibit 4)

13. The Authority has employed Ronda Bogle as its office administrator since January 1, 2003. Bogle supervised Pfleegor in her position as sewer billing clerk. (N.T. 132-133)

14. By memo dated October 28, 2004, Bogle informed Pfleegor that she had "started to notice that the bank deposits are not being done daily as we have discussed in the past." (N.T. 81-83, 135; Authority Exhibit 12)

15. By memo dated December 1, 2004, Bogle noted that Pfleegor had failed to make a bank deposit and again informed her that deposits must be made on a daily basis. (N.T. 81-83, 135-136; Authority Exhibit 13)

16. By memo dated December 10, 2004, Bogle informed Pfleegor as follows:

"On two occasions this week, you have violated the work rule that sewer payments you receive are to be processed and deposited in the bank on a daily basis. This rule was implemented by the Authority based upon the suggestion of the auditors. This rule should be considered a daily priority. You may need to adjust your work schedule to see that the deposit is done prior to some of your other sewer billing responsibilities. Your disregard of this rule is a serious concern to the Authority and the continued disregard for this work rule may result in future disciplinary action."

(N.T. 83, 136; Authority Exhibit 14)

17. On February 1, 2005, the Union filed a grievance over the seniority date that the Authority assigned to Pfleegor. The grievance alleged that Pfleegor's seniority date should be the date of her hiring by the Borough, rather than the date of her hiring by the Authority. (N.T. 13-14, 32-33; Union Exhibit 1)

18. On the morning of February 28, 2005, Pfleegor received a written warning for failing to make daily bank deposits on February 23 and 24, 2005. Pfleegor grieved the written warning and the grievance was processed to grievance mediation. On April 18, 2005, the grievance mediator reduced the written warning to a verbal warning. (N.T. 25-27, 44-46, 73-74, 85, 136-137; Authority Exhibit 6)

19. On March 1, 2005, Pfleegor received a three-day suspension for failing to make a daily bank deposit on February 28, 2005. Pfleegor grieved the suspension and the grievance was processed to grievance mediation. On April 18, 2005, the grievance mediator upheld the three-day suspension. (N.T. 25-27, 46-47, 75-76, 137-138; Authority Exhibit 7)

20. On February 28, 2005, Pfleegor received a verbal warning for various performance issues, including making adjustments of over \$50 to sewer bills without written management approval. Supervisor Bogle had informed Pfleegor by memo dated May 4, 2004 that any sewer billing adjustments "over \$50.00 **must** be approved in writing by me or the Superintendent." The memo was issued after the Authority's auditors, in completing the 2003 audit, found that there were sewer bill adjustments that "were not supported by documentation" and that "[t]he ability to change revenue amounts, without supporting documentation for management to review, represents poor internal control." Pfleegor grieved the February 2005 verbal warning and the grievance was processed to grievance mediation. On April 22, 2005, the grievance mediator upheld the verbal warning. (N.T. 42-44, 140-141; Authority Exhibits 5, 10; emphasis in original)

21. In a March 10, 2005 report to the Authority's board concerning the 2004 audit, the Authority's auditors stated as follows regarding adjustments to sewer billing:

"We discussed this subject with Ronda and George during the 2003 audit. Ronda stated in a memo to Patricia Pfleegor that all adjustments over \$50.00 needed to be authorized by her in writing. At no time during the 2004 year was this done nor were adjustments supported by documentation. The ability to change revenue amounts, without supporting documentation for management to review, represents poor internal control."

(N.T. 141-142; Authority Exhibit 11)

22. On May 20, 2005, Supervisor Bogle issued a memo to Pfleegor which stated as follows:

"The Authority Board made it very clear that any adjustments you make over \$50.00 should be well documented and **must** first be approved by me before you enter them in the sewer billing system. In my absence George would approve these adjustments. This is a very serious matter and should be treated as such."

(N.T. 77-78; 141-142; Authority Exhibit 11; emphasis in original)

23. On May 26, 2005, Pfleegor received a written warning for making bank deposits into the wrong account. Pfleegor made eleven deposits totaling over \$27,000 into an account in which the Authority does not ordinarily make deposits. Pfleegor grieved the discipline, but it was upheld. (N.T. 49-50, 76-77, 138-139; Authority Exhibit 8)

24. On March 23 and June 9, 2005, Pfleegor made sewer bill adjustments exceeding \$50 without written management approval. Supervisor Bogle became aware of Pfleegor's failure to obtain written approval for these adjustments in August 2005. Bogle then notified Superintendent Myers and the matter was discussed with the Authority's board. At its meeting on August 18, 2005, the Authority's board decided to terminate Pfleegor's employment. (N.T. 50, 52, 86-87, 143-146, 172-173, 177-182; Authority Exhibits 9, 15, 16)

25. On July 12, 2005, the Authority and the Union participated in a grievance arbitration hearing concerning the grievance that was filed over Pfleegor's seniority date. (N.T. 12-14; Union Exhibit 1)

26. Pfleegor was informed of her termination on September 6, 2005. (N.T. 94-95, 146, 180-182; Authority Exhibit 9)

27. In an opinion and award issued on September 5, 2005, the arbitrator sustained the Union's grievance regarding Pfleegor's seniority date.<sup>2</sup> (N.T. 94-95; Union Exhibit 1)

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<sup>2</sup> The Court of Common Pleas of Northumberland County affirmed the arbitration award. The Authority has appealed the decision of the common pleas court to Commonwealth Court. (N.T. 15-16; Union Exhibit 2)

28. The Authority received the arbitration award after September 6, 2005. Pfleegor also received the award after September 6. (N.T. 94-95, 180)

#### DISCUSSION

The Union alleges that the Authority violated Section 1201(a)(1) and (3) of PERA by discharging Patricia Pfleegor because of her protected activity. The Authority contends that the Union failed to prove that Pfleegor was discharged because of her protected activity. The Authority further contends that even if the Union established a prima facie case of discrimination, the Authority overcame that prima facie case by establishing that Pfleegor was terminated for work performance issues.

The complainant in a discrimination case has the burden of proving that the employee engaged in protected activity, that the employer was aware of the employee's protected activity, and that the employer took adverse action against the employee because of an unlawful motive or anti-union animus. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Where the complainant establishes a prima facie case that protected activity was a motivating factor in employer action, "the employer may negate or disprove the complainant's case by countering with evidence that the action complained of would have been taken even in the absence of protected activity." City of Wilkes-Barre, 33 PPER ¶ 33087 at 194 (Final Order, 2002), citing Wright Line, Inc., 251 NLRB 150, 105 LRRM 1169 (1980). See also Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993).

The record indicates that Pfleegor was a union steward in 2004, that she was a member of the Union's bargaining team in contract negotiations that commenced around February 2004, and that she filed numerous grievances. Moreover, it is undisputed that the Authority was aware of Pfleegor's filing of grievances and of her participation in contract negotiations on behalf of the Union. Therefore the Union has satisfied the first two elements of its burden of proof under St. Joseph's Hospital.

With regard to the third element of the Union's burden of proof, the Union argues that a discriminatory motive should be inferred for Pfleegor's discharge because, inter alia: (1) the Authority's "prior unlawful refusal to recognize [the Union] and its unlawful unilateral changes to bargaining unit employees' wages and benefits, established in PLRB cases PERA-C-02-622-E and PERA-C-04-69-E, confirm its anti-union animus since its inception"; (2) "the undisputed evidence that only Patricia Pfleegor received any discipline since the [Authority's] inception confirms that she was treated disparately by her employer"; (3) "[t]he timing of her termination shortly after her arbitration hearing provides additional support for finding a violation"; (4) all of the discipline received by Pfleegor was issued after she engaged in protected activity by challenging an Authority board member at a negotiating session and contesting her seniority date by use of the arbitration procedure; (5) the Authority's reliance on two billing adjustments is clearly pretextual because Pfleegor gave her supervisor notice of both billing adjustments before she entered them; (6) the discipline issued to Pfleegor was unreasonably harsh given the underlying conduct; and (7) the Authority failed to meet its burden of proving the appropriateness of the discharge.

The Union's reliance on the Board's decisions in Case Nos. PERA-C-02-622-E and PERA-C-04-69-E is misplaced because there was no finding in those cases that the Authority was motivated by anti-union animus. Rather, the Board found in both cases that the Authority had violated its duty to bargain under Section 1201(a)(5) of PERA, and had committed a derivative violation of Section 1201(a)(1). Thus, even if the Union could rely on prior findings of a discriminatory motive to establish a discriminatory motive in this case, the cited decisions did not include such a finding. Consequently, they provide no basis for inferring an anti-union motive for Pfleegor's discharge.

The Union's claim of disparate treatment cannot be sustained because there is no evidence that other employees had performance deficiencies similar to Pfleegor. Disparate treatment may only be found when an employer treats similarly-situated employees differently based on their support or lack of support for the union. See Chester Upland School District, 29 PPER ¶ 29179 (Final Order, 1998)(claim of disparate treatment rejected because there was no evidence that other employees had similar deficiencies in

their work performance). Here there is no evidence that the Authority gave more favorable treatment to other employees who had performance deficiencies similar to Pfleegor, but were not supportive of the Union. Accordingly, the Union failed to establish that Pfleegor was subject to disparate treatment.

With regard to Union arguments (3) and (4), close timing between protected activity and employer action, standing alone, is an insufficient basis to infer anti-union animus. Montour County, 35 PPER 12 (Final Order, 2004); Lebanon County, 32 PPER ¶ 32006 (Final Order, 2000); Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984). Moreover, Pfleegor's discharge occurred approximately one and a half years after she was involved in the discussion with the Authority board member at the negotiation session. Thus, I do not find this incident particularly relevant in assessing the Authority's motive for the discharge. As the examiner noted in Montgomery County Sheriff, 34 PPER 154 (Proposed Decision and Order, 2003), quoting Beaver Valley Intermediate Unit, 26 PPER ¶ 21006 at 19 (Final Order, 1989), "a lengthy time period between the protected activity and the action complained of does serve to undermine the attempt to establish an unlawful motive." 34 PPER at 471.

Not only did Pfleegor's discussion with the board member occur long before her discharge, but the board member apologized for his remarks to Pfleegor, Pfleegor was not disciplined for her remarks to the board member, and the board member left the Authority's board well before the board decided to discharge Pfleegor. Consequently, I find that Pfleegor's testy discussion with the former member of the Authority's board does not support a finding that the board was motivated by anti-union animus in discharging Pfleegor eighteen months later.

The Union claims that the Authority's reliance on two billing adjustments to discharge Pfleegor is "clearly pretextual." However, her discharge was premised on a history of performance deficiencies, including the two billing adjustments (Authority Exhibit 9). Also, Pfleegor was advised in May 2004 that any billing adjustments over \$50 had to be approved in writing by Supervisor Bogle or Superintendent Myers and she was disciplined in February 2005 for failing to comply with that work rule (FF 20). Thus, Pfleegor was on notice of the requirement to obtain written management approval for sewer billing adjustments over \$50. She nevertheless failed to obtain such approval for adjustments made in March and June 2005 (FF 24). Even if Pfleegor gave her supervisor verbal notice of the adjustments, as the Union claims, she did not obtain written management approval, as the Authority's work rule required. In view of Pfleegor's extensive history of performance deficiencies, including her failure to obtain written management approval for sewer billing adjustments over \$50 despite notice of this work rule, I cannot find that the stated reasons for the discharge were pretextual.

Union argument (6) must be rejected for the reasons stated by the examiner in Adams Township, 36 PPER 119 (Proposed Decision and Order, 2005), 36 PPER 162 (Final Order, 2005):

"The lack of just cause as an arbitrator might define the term also will not support an inference of union animus. As the Board recently opined in Bucks County Community College, 36 PPER 84 (Final Order 2005):

'Establishing pretext is more than showing a lack of just cause for discipline. Even though the employer's reasons for disciplining an employe may be lacking in just cause, the complainant's burden in an unfair practice proceeding is to show that the employer was consciously intending to retaliate against the employe for engaging in protected activity. An employer's sincerely held, but incorrect (under a "just cause" standard) belief that an employe has committed a dischargeable offense is not an unfair practice.'

(Slip Opinion at 3-4). See also Commonwealth of Pennsylvania, Department of Corrections, Case No. PERA-C-02-169-E (Final Order, August 16, 2005) (discrimination charge that appeared to be a just cause grievance was dismissed)."

36 PPER at 339.

Union argument (7) must similarly be rejected because an employer is not required to convince the Board that an employee was removed for good cause in order to be acquitted of a discrimination charge. PLRB v. Sansom House Enterprises, Inc., 378 Pa. 385, 106 A.2d 404 (1954). "Absent a showing of anti-union motivation, an employer may discharge an employe for a good reason, a bad reason, or no reason at all without running afoul of the labor laws." Bensalem Township, 18 PPER ¶ 18110 at 322 (Proposed Decision and Order, 1987), quoting Clothing Workers v. NLRB, 564 A.2d 434, 440 (D.C. Cir. 1977).

Here I find that the Union failed to prove that the Authority discharged Pfliegor in retaliation for her protected activity. To the contrary, I find that the substantial, credible evidence of record indicates that the Authority discharged Pfliegor because of work performance deficiencies. Therefore, the Union's 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.
3. The Board has jurisdiction over the parties hereto.
4. The Authority has not committed unfair 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 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 thisfourteenth day of August, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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PETER LASSI, Hearing Examiner

August 14, 2006

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MILTON REGIONAL SEWER AUTHORITY  
Case No. PERA-C-05-431-E

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

Sincerely,

Peter Lassi  
Hearing Examiner

Enclosure

cc: Jimmy W. Little  
Milton Regional Sewer Authority