

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :
 :
 v. : Case No. PERA-C-03-219-E
 :
 LYCOMING COUNTY :

PROPOSED DECISION AND ORDER

On June 11, 2003, Teamsters Local 764 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Lycoming County (County) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (Act). On July 21, 2003, the Union filed an amended charge.

On September 11, 2003, the Secretary of the Board issued an order and notice of hearing wherein October 23, 2003 in Harrisburg was assigned as the time and place of hearing. The hearing was held before Thomas P. Leonard, Esquire, a hearing examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Union filed a second amended charge of unfair practices on November 6, 2003. On November 26, 2003, the Union withdrew this second amended charge. Additional days of hearing were required and were held on December 9, 2003, June 3 and July 20, 2004.

The hearing 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 Lycoming County is a public employer within the meaning of Section 301(1) of the Act.
2. That Teamsters Local 764 is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Union is the exclusive certified bargaining representative of all full-time and regular part-time professional employes who are directly involved with and necessary to the functioning of the Courts and who are not hired, fired and directed by the Courts including but not limited to Executive District Attorney, Assistant District Attorneys and Public Defender Assistants; and excluding management level employes, supervisors, first-level supervisors, confidential employes and guards as defined in the Act. The unit was certified by the Board on July 10, 2003 (PERA-R-03-102-E).
4. That on March 20, 2003, the Union filed a petition for representation for assistant district attorneys and assistant public defenders which resulted in the certification of the above bargaining unit. (N.T. 215, Union Exhibit 7)
5. That Roan Confer is an Assistant District Attorney. In early 2003, he and county detective Curt Guyette met with Mike Hartman, the secretary-treasurer and business representative with Teamsters Local 764, to discuss organizing the ADAs and APDs. Confer and Guyette then became the leaders of the organizing drive for the Teamsters that led to the unit's certification. Confer passed out authorization cards and informed his supervisor, District Attorney Michael Dinges, that he was doing so. (N.T. 214, 222-224, 231, 257, 270)
6. That District Attorney Dinges knew that Confer was involved in the organizing drive. Dinges did not tell the County Commissioners that Confer was involved. (N.T. 332, 333-334, 342-343)

7. That Joseph Neyhart, who was a County Commissioner at the time of the organizing but is now retired, did not know of Confer's union activity. (N.T. 711-712, 717-720)

8. That Commissioner Rebecca Burke did not know of Confer's union activity. (N.T. 808, 813)

9. That Controller David Raker was aware of a union organizing drive but did not know of Confer's union activity. (N.T. 178)

10. That on July 29, 1999, the County Commissioners approved Ordinance 99-4 establishing the County's Table of Distribution and Authorizations (TDA) for personnel. As described by Andrew Follmer, the County Administrator, the TDA is an essential management tool for the administration of the county in that no employees are hired, promoted, demoted or paid unless it is in compliance with the TDA. (N.T. 128, Respondent's Exhibit 1)

11. That changes to the TDA are done only after approval of the County Salary Board, which meets immediately after the weekly commissioners' meeting. The Salary Board is comprised of the three county commissioners, the controller and the elected official responsible for the employee in question. In this case, the fifth member of the Salary Board was the District Attorney. (N.T. 164, 360, 792).

12. That on March 21, 2003, District Attorney Michael Dinges met with the Commissioners, the Director of Fiscal Services, Robert Noll, and the Director of Administration/Chief Clerk, Andrew Follmer, to discuss his budget and capital murder cases. He verbally notified the Commissioners at this meeting that he had taken Mr. Confer out of the Executive District Attorney position and was utilizing him as an Assistant DA. The Director of Administration/Chief Clerk requested notification in writing for the appropriate TDA and salary board action. (N.T. 128, 386-392, 439; Respondent's Exhibit 1)

13. That around January, 2003, Confer had requested that Dinges change his status from Executive Assistant District Attorney to Assistant District Attorney because it would allow him to get back into the courtroom and because he did not like supervising the staff. Dinges agreed with his request. (N.T. 115-116)

14. That on April 2, 2003, Mr. Dinges sent a memorandum to Mr. Follmer advising that effective March 1, 2003, Confer would no longer hold the position of Executive District Attorney. The memo stated he would be using Mr. Confer as an Assistant DA. The memo further stated that the District Attorney, Mr. Dinges, had assumed the supervisory duties that Mr. Confer had in the Executive DA position. The memo further stated that Mr. Dinges and Mr. Confer discussed the action. (N.T. 128, 439; Respondent's Exhibits 1, 6 and 11)

15. That Follmer recommended to the Salary Board that Confer's position be reclassified and that his salary be reduced. (N.T. 176)

16. That on June 2, 2003, the County Commissioners received a letter from DA Michael Dinges requesting that Mr. Confer remain at the same salary level even though not performing the duties of Executive DA for which he received a \$1,500 increase. (N.T. 19, 128, 439; Respondent's Exhibits 1 and 11)

17. That on June 5, 2003, the TDA change reclassifying the Executive District Attorney position to an Assistant District Attorney position was approved by the Board of Commissioners and the Salary Board, by a vote of 4-1 (Dinges' designated representative, First Assistant/Deputy DA, Ken Osokow, voted against the resolution.) The vote approved the reclassification of Confer from Executive District Attorney to Assistant District Attorney, pay grade 11, at \$39,873 effective March 1, 2003. When the Board of Commissioners approved the change of the TDA to create another Assistant DA position the Salary Board approved the action to reclassify Confer back to an Assistant DA position with no supervisory or management responsibilities. The new salary was set at \$39,873. (N.T. 128, 151, 439; Respondent's Exhibits 1 and 12)

DISCUSSION

The Union's charge of unfair practices alleges that on June 5, 2003, the Lycoming County salary board met and "approved the reclassification of Roan J. Confer, Jr. from Executive District Attorney to Assistant District Attorney - Pay Grade 11- \$39,873.40 effective March 1, 2003" as an act of retaliation against Confer, an organizer of the Union's drive to obtain Board certification of the Assistant District Attorneys and Public Defenders.

The County raises several defenses. The County contends that the Union did not prove that the members of the Salary Board had knowledge of Confer's union activity. Furthermore, the County contends that the reduction of pay was not retaliatory but was a personnel move initiated by Confer's supervisor based on Confer's own request for a reduction in duties. Finally, the County argues that the reduction was consistent with County policy and past practices as applied to numerous other employees.

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)

As for the first element, the union proved that Confer was engaged in protected activity. The union demonstrated that Confer was a leader of a small group of assistant district attorneys (ADAs) and assistant public defenders (APDs) who came together to organize for the Teamsters to represent them. Confer was one of the two lead organizers who met with the Teamsters representative. He obtained the necessary signatures for the showing of interest. Confer also placed a union bumper sticker on his car. All of this is evidence of protected activity. Confer went beyond mere membership in the Teamsters to actual affirmative action on behalf of the employee organization. See Clarion County, 32 PPER ¶ 32165 (Final Order, 2001)

Next, the complainant must prove employer knowledge of his protected activity. The failure to prove employer knowledge of the protected activity means the complaint will also fail. Teamsters Local 764 v. Montour County, 35 PPER ¶ 147 (Final Order, 2004).

In the present case, the union must prove that the five member County Salary Board, who decided to reduce Confer's pay, had knowledge of Confer's activities on behalf of the union. The Salary Board is made up of the three county commissioners, the Controller and the elected row officer whose employee was at issue, in this case the District Attorney. Four members of the Salary Board testified in this hearing. Only one, District Attorney Dinges, testified that he knew of Confer's union activity. However, Dinges testified that he did not tell the other members of the Salary Board about Confer's activity. The three other members of the Board who testified, the controller and two commissioners, testified they did not know of Confer's activities. Controller David Raker testified that he was vaguely familiar with the fact that an organizational drive was underway and that he was also aware that Confer's pay reduction was being recommended by County Administrator Follmer. However, he testified that he had no discussions with Follmer about Confer's union organizing. Commissioners Rebecca Burke and Joseph Neyhart, contended they did not know of Confer's role in the union organizing.

Without direct evidence on the record that the members of Salary Board had knowledge of Confer's union activity, the complainant is left to argue that knowledge should be inferred from other facts in the case. The complainant argues that a letter from Confer's private attorney to the three commissioners should be interpreted as putting the commissioners on notice that Confer was engaged in union activity. However, the letter does not state what activity that Confer was doing for the union or even that Confer was engaged in activity for the union. Accordingly, this letter will be given no effect to

infer knowledge on the part of the Commissioners. The complainant also argues that knowledge should be inferred from a conversation between Robert Noll, a fiscal administrator at the county, and Debra Reed, a paralegal in the District Attorneys office, who testified that Noll told her that there would be retaliation against Confer for his union activities. This would show that at least one high ranking administrator had knowledge of Confer's union activity, knowledge that could then be imputed to his superiors and ultimately to the commissioners themselves. However, when it came time for Noll to give testimony, he testified that he had no knowledge of Confer's union activity (N.T. 748). His denial of knowledge of Confer's union activity undercuts Reed's testimony of what he allegedly told her and forecloses any inferences being drawn from her testimony.

Without evidence of the Salary Board's knowledge of Confer's activity, the record is lacking proof of the second part of the test for discriminatory action. Having found the complainant did not prove the second part of the test for anti-union discrimination, it is unnecessary to address the complainant's arguments that it proved the third part of the test, that the county reduced Confer's salary because of his exercise of protected activity. Montour County, supra.

CONCLUSIONS

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

1. That Lycoming County is a public employer within the meaning of Section 301(1) of the Act.
2. That Teamsters Local 764 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 County has not committed unfair practices within the meaning of Sections 1201 (a)(1) and (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 rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this tenth day of July, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner

Direct Dial 717-783-6021

July 10, 2006

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LYCOMING COUNTY
Case No. PERA-C-03-219-E

Enclosed is a copy of the proposed decision and order issued this date.

Sincerely,

THOMAS P. LEONARD,
Hearing Examiner

Enclosure

cc: Lycoming County Commissioners
Teamsters Local #764