

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL UNION :
LOCAL 3 :
v. : Case No. PERA-C-05-531-W
GREENE COUNTY CAREER AND TECHNOLOGY CENTER :

SERVICE EMPLOYEES INTERNATIONAL UNION :
LOCAL 3 :
v. : Case No. PERA-C-05-609-W
GREENE COUNTY CAREER AND TECHNOLOGY CENTER :
JANICE QUAILEY :

PROPOSED DECISION AND ORDER

On November 8, 2005, Service Employees International Union Local 3 (SEIU) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Greene County Career and Technology Center (Center)¹ had violated sections 1201(a)(1), 1201(a)(2), 1201(a)(3) and 1201(a)(4) of the Public Employe Relations Act (Act) by changing the hours of Douglas Kerr and Christopher Watson and laying off Jay Riggensch and Thomas Custer in retaliation for the filing of a charge of unfair practices at Case No. PERA-C-05-502-W. The Board docketed the charge to Case No. PERA-C-05-531-W. On February 2, 2006, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on March 29, 2006, if conciliation did not resolve the charge by then. The hearing examiner subsequently continued the hearing upon the request of the Center and without objection by SEIU.

On December 29, 2005, Mr. Riggensch filed with the Board a charge of unfair practices alleging that the Center² had violated sections 1201(a)(1), 1201(a)(2), 1201(a)(3) and 1201(a)(4) of the Act by not giving him the opportunity to work and scheduling a less senior employe to work instead in retaliation for questioning his lay off and requesting information for negotiations. The Board docketed the charge to Case No. PERA-C-05-609-W. On February 3, 2006, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on April 11, 2006, if conciliation did not resolve the charge by then. The hearing examiner subsequently continued the hearing so the charge could be heard at the same time as the hearing in Case No. PERA-C-05-531.

On April 25, 2006, a hearing on both charges was held. All parties were afforded a full opportunity to present evidence and to cross-examine witnesses. No party filed a brief. On June 7, 2006, the notes of testimony were filed with the Board.

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

¹ SEIU actually filed its charge against "Jan Quailey (Director) Greene Co Career and Technology Center." As the director of the Center, however, Ms. Quailey would be the Center's agent. As the Center's agent, she would not be personally liable for any unfair practices that she may have committed in that capacity; rather, the Center as her principal would be. Lancaster County, 30 PPER ¶ 30180 (Final Order, 1999), aff'd on another ground sub nom. Teamsters Local 771 v. PLRB, 760 A.2d 496 (Pa. Cmwlth. 2000)(the principal is liable for the unfair practices committed by its agent). Thus, the charge has been construed as having been filed against the Center.

² Mr. Riggensch actually filed his charge against "Janice Quailey Director Greene County Career and Technology Center." For the reasons set forth in footnote 1, the charge has been construed as having been filed against the Center.

FINDINGS OF FACT

1. On September 15, 2004, the Center's joint operating committee passed a motion "to continue to use Jay Riggerbach and Thomas Custer as part-time maintenance workers for 4 days a week."³ The Center already employed Mr. Kerr, Michael Pierson and Mr. Watson as custodial or maintenance employees at the time. (N.T. 46, 53, 59; Union Exhibit 1)

2. By memorandum dated October 18, 2004, the Center's director (Ms. Quailey) wrote to "custodial/maintenance and substitutes" as follows:

"As we have discussed last year and this year, we will try various schedules as long as they don't interfere with the daytime staff and students. In addition, your schedule needs to be flexible based on the evening courses and any events. With two recent daytime accidents as well as input from others, I need to adjust the schedule. Last Friday, we met to discuss and implement the following schedule change:

7 am - 3 pm Mike

Everyone else:

10 am - 6 pm Monday-Wednesday-Friday

1:30 pm - 9:30 pm For night classes or for night functions that occur an any day

Although I would like to have you all scheduled during the day, I see that it is not going to work. Let's try the above schedule and see how it goes. Thank you for your cooperation."

(N.T. 80; Employer Exhibit 2)

3. In December 2004, the Center began a renovation project that caused an increase in dust and dirt and resulted in an increased need for custodial services. (N.T. 40, 82-83, 89-90)

4. On March 10, 2005, SEIU filed with the Board a petition for representation to determine the exclusive representative, if any, of a bargaining unit that would include maintenance and custodial employees of the Center. (Case No. PERA-R-05-106-W)

5. By memorandum dated May 2, 2005, Ms. Quailey wrote to Mr. Pierson, Mr. Kerr and Mr. Watson as follows:

"Currently and until you hear otherwise, the following work hours are in place:

Mike works from 6 AM to 2 PM.

Doug and Chris work from 3 PM to 11 PM.

These hours will still be kept even in the event Jay Riggerbach or Tom Custer or both are absent.

In addition, any overtime hours need to be discussed and/or approved by me prior to taking them. Any overtime that is taken without prior approval due to an emergency, must be reported to me immediately or the following day.

If there is any question, call or see me."

³ The motion was actually passed by the Greene County Vocational-Technical School's joint operating committee (Union Exhibit 1). By all accounts, however, the Greene County Vocational-Technical School is now known as the Center, so any reference to the Greene County Vocational-Technical School in the exhibits as well as in SEIU's certification history has been construed as a reference to the Center.

(Employer Exhibit 2)

6. On June 16, 2005, SEIU and the Center filed with the Board a joint request for certification of SEIU as the exclusive representative of a bargaining unit that would include custodial and maintenance employees of the Center. (Case No. PERA-R-05-106-W)

7. On June 23, 2005, the Board certified SEIU as the exclusive representative of a bargaining unit that includes custodial and maintenance employees of the Center. (Case No. PERA-R-05-106-W)

8. By memorandum dated August 26, 2005, Ms. Quailey wrote to Mr. Kerr and Mr. Watson as follows:

"There are some factors that affect the need to adjust your work hours. Westmoreland Community College classes are beginning next week down in the LPN area. I need you to begin the hours of 2:00 pm to 10:00 pm on Monday, August 29, 2005. This will also provide seven hours without students and staff in the building so that you can complete cleaning and maintaining the building without interrupting them.

You have worked so very hard this summer and on behalf of everyone here at the school, I thank you for your efforts."

(Employer Exhibit 2)

9. On October 25, 2005, Mr. Pierson filed a charge alleging that Ms. Quailey committed unfair practices by telling him "not to go above her or behind her back to discuss thing[s] that concern other[s]." (Case No. PERA-C-05-502-W)

10. On November 1, 2005, the Board sent to Ms. Quailey a letter notifying her of the filing of the charge by Mr. Pierson. (Case No. PERA-C-05-502-W)

11. In early November 2005, the renovation project was "finishing up" and the dirt and dust caused by the renovation project had been removed. Based on her assessment of the need for custodial and maintenance services under the circumstances, Ms. Quailey decided to change the hours of Mr. Kerr and Mr. Watson and to lay off Mr. Riegenbach and Mr. Custer. (N.T. 40, 83-86)

12. By memorandum dated November 4, 2005, Ms. Quailey wrote to Mr. Kerr and Mr. Watson as follows:

"New work hours will begin November 7, 2005. The new hours will be 3:00 pm to 11:00 pm.

Since there are some afternoon classes that run in LPN, usually beginning at 4:00 pm, that may be an area to begin your work so as not to distract or interrupt class instruction or you could return there after 10:00 pm when class is over.

In addition, there has been a request to clean the floors in Math daily since many students wear their boots to class. I appreciate your attending to that."

(N.T. 47; Employer Exhibit 2)

13. On November 4, 2005, Ms. Quailey informed Mr. Riegenbach and Mr. Custer that they were to be laid off and called as needed. (N.T. 17, 40, 62)

14. On November 30, 2005, Mr. Riegenbach questioned the joint operating committee about why his hours and Mr. Custer's hours had been cut. The joint operating committee limited the time he had to do so and prohibited him from "bring[ing] up certain things."

The joint operating committee had not limited questioning from the public in the past. (N.T. 19-21; Union Exhibit 5)

15. In December 2005 and thereafter, the Center's executive secretary (Maryann Haiden) called Mr. Riggenschach to work as a substitute custodian. If she could not reach him, she called Mr. Custer to work in his place. (N.T. 19, 72, 77; Employer Exhibit 1)

DISCUSSION

SEIU has charged at Case No. PERA-C-05-531-W that the Center committed unfair practices under sections 1201(a)(1), 1201(a)(2), 1201(a)(3) and 1201(a)(4) of the Act by changing the hours of Mr. Kerr and Mr. Watson and laying off Mr. Riggenschach and Mr. Custer in retaliation for the filing of a charge of unfair practices at Case No. PERA-C-05-502-W.

Mr. Riggenschach has charged at Case No. PERA-C-05-609-W that the Center committed unfair practices under sections 1201(a)(1), 1201(a)(2), 1201(a)(3) and 1201(a)(4) of the Act by not giving him the opportunity to work and scheduling a less senior employe to work instead in retaliation for questioning his lay off and requesting information for negotiations.

The Center contends that both charges should be dismissed for lack of proof. The Center submits that it changed the hours of Mr. Kerr and Mr. Watson and laid off Mr. Riggenschach and Mr. Custer because the need for their services changed as a renovation project concluded. The Center also submits that it asked Mr. Riggenschach to work on a number of occasions after he was laid off.

Preliminarily, it is noted that SEIU and Mr. Riggenschach presented testimony to show that the Center changed the status quo and retaliated against employes in general and Michael Pierson in particular after they organized (N.T. 12-13, 25-26, 39-40, 45-47, 51, 54-56, 59-66). SEIU and Mr. Riggenschach have not charged, however, that the Center committed unfair practices by changing the status quo and retaliating against employes for having organized, so no such unfair practices may be found. Commonwealth of Pennsylvania (Liquor Control Board), 22 PPER ¶ 22009 (Final Order 1991), citing PHRC v. United States Steel Corporation, 458 Pa. 559, 325 A.2d 910 (1974)(the Board only has jurisdiction to find the unfair practices alleged in a charge). The testimony SEIU and Mr. Riggenschach presented to show that the Center changed the status quo and retaliated against the custodians in general and Mr. Pierson in particular after they organized nevertheless has been reviewed to place into context the specific actions at issue in the charges.

The charge at Case No. PERA-C-05-531-W must be dismissed for lack of proof. In support of the charge, SEIU presented testimony that the Center's director (Ms. Quaily) changed the hours of Mr. Kerr and Mr. Watson and laid off Mr. Riggenschach and Mr. Custer on the very day she should have received notice of the filing of the charge of unfair practices at Case No. PERA-C-05-502-W (N.T. 17) and that as much or more custodial work remained to be done after Mr. Riggenschach and Mr. Custer were laid off than before they were laid off (N.T. 7-8, 11-12, 16, 40, 54, 57-58). Although close timing between a protected activity and an employer's action coupled with an insubstantial explanation for the employer's action will support a charge that the employer was discriminatorily motivated, Lehigh Area School District v. PLRB, 682 A.2d 439 (Pa. Cmwlth. 1996), the charge must be dismissed because the Center rebutted any prima facie case of discrimination that SEIU may have presented. As set forth in finding of fact 11, Ms. Quaily credibly testified that she changed the hours of Mr. Kerr and Mr. Watson and laid off Mr. Riggenschach and Mr. Custer based on her assessment of the need for their services as a renovation project was finishing up. Moreover, as set forth in findings of fact 2, 5, 8 and 12, the record shows that Ms. Quaily routinely changed the hours of Mr. Kerr and Mr. Watson before and after the charge at Case No. PERA-C-05-502-W was filed. There is, therefore, no basis for finding that the Center committed unfair practices as charged. Lebanon County, 32 PPER ¶ 32006 (Final Order 2000)(retaliation charge dismissed where the employer took the action at issue for a non-discriminatory reason).

The charge at Case No. PERA-C-05-609-W must be dismissed for lack of proof as well. In support of the charge, Mr. Riggenschach presented testimony that he questioned his lay

off at a meeting of the Center's joint operating committee on November 30, 2005, and that the joint operating committee limited the time he had to ask questions even though it had not limited questioning from the public in the past and prohibited him from "bring[ing] up certain things" (N.T. 19-21). He also presented testimony that he met with the joint operating committee at an executive session in December 2005 to discuss "what was going on at the school in reference to us being laid off, PLRB complaints being filed against the director, and so forth" and that for seven days straight thereafter Mr. Custer rather than he was called to work even though Mr. Custer has less seniority than he does (N.T. 24-25, 30-32). He did not present testimony that he ever requested information for negotiations as set forth in the charge.

An employer's disparate treatment of similarly situated employees will support a charge that the employer was discriminatorily motivated, City of Reading v. PLRB, 568 A.2d 715 (Pa. Cmwlth. 1989), but any such charge must be proven by substantial evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229." PLRB v. Kaufman Department Stores, Inc., 345 Pa. 398, 400, 29 A.2d 90, 92 (1942). Notably, as set forth in finding of fact 6, the record shows that SEIU and the Center jointly requested that SEIU be certified as the exclusive representative of the custodial and maintenance employees. With that fact in mind, the fact that the joint operating committee limited the time Mr. Riggerbach had to ask questions even though it had not limited questioning by the public in the past and the fact that the joint operating committee prohibited him from "bring[ing] up certain things" provide an insubstantial basis for finding that the Center retaliated against him. Moreover, the charge may be searched in vain for any allegation that the Center committed unfair practices by retaliating against him for discussing "what was going on at the school in reference to us being laid off, PLRB complaints being filed against the director, and so forth," so no such unfair practices may be found. Commonwealth of Pennsylvania (Liquor Control Board), supra. In any event, the Center rebutted any prima facie case of discrimination that he may have presented. As set forth in finding of fact 15, the Center's executive secretary (Ms. Haiden) credibly testified that she called Mr. Riggerback to work after he appeared before the joint operating committee and only called Mr. Custer to work if she could not reach Mr. Riggerbach. There is, therefore, no basis for finding that the Center committed unfair practices as charged. Lebanon County, supra.

CONCLUSIONS

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

1. The Center is a public employer under section 301(1) of the Act.
2. Mr. Riggerbach is a public employe under section 301(2) of the Act.
2. SEIU is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The Center has not committed unfair practices under sections 1201(a)(1), 1201(a)(2), 1201(a)(3) and 1201(a)(4) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaints are rescinded and the charges dismissed.

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of June 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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June 27, 2006

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GREENE COUNTY CAREER AND TECHNOLOGY CENTER
Case No. PERA-C-05-531-W

GREENE COUNTY CAREER AND TECHNOLOGY CENTER, JANICE QUAILEY
Case No. PERA-C-05-609-W

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Jay Riggerbach
Janice Quailey
Greene County Career and Technology Center
Pittsburgh Regional Office