

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

STATE COLLEGE AND UNIVERSITY PROFESSIONAL :
ASSOCIATION PSEA/NEA :
:
v. : Case No. PERA-C-05-283-E
:
STATE SYSTEM OF HIGHER EDUCATION :
CLARION UNIVERSITY :

PROPOSED DECISION AND ORDER

On June 27, 2005, SCUPA filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the State System of Higher Education (SSHE) had violated sections 1201(a)(1), 1201(a)(2) and 1201(a)(3) of the Public Employee Relations Act (Act) by "unilaterally remov[ing] from the Bargaining Unit De[A]nn Martz, Director of Transition Services." According to SCUPA,

"[w]hen De[A]nn Martz sought reclassification under the procedures of the collective bargaining agreement, rather than classifying her to a higher level pay salary within the Bargaining Unit, they unilaterally removed her from the Bargaining Unit and declared her a manager. The full reason for doing this was recognition of De[A]nn Martz's efforts on behalf of Clarion University."

On July 26, 2005, the Secretary of the Board informed SCUPA that the Board could not process the charge as filed and requested the following of SCUPA:

"Please amend the charge on the enclosed form to indicate whether the Employer's action constituted removal of bargaining unit work from the unit, i.e., did the position that De[A]nn Martz held get removed from the unit, or was she reclassified into an existing position outside of the unit? Was there a change in the employee's pay or benefits, other than her removal from the bargaining unit?"

You should also provide clarification of the statement in the charge with regard to the Employer's motivation for the actions, as the charge lacks sufficient support for the allegation that there was a violation of Section 1201(a)(3)."

On August 3, 2005, SCUPA filed an amendment alleging that SSHE's "action constituted a removal of Bargaining Unit work from the Unit because De[A]nn Martz continues to do the same work that she did when she was in the Bargaining Unit" and that SSHE "penalized [her] for seeking reclassification to a higher pay grade by virtue of exercising her rights to have her position reviewed and reclassified in the Bargaining Unit."

On September 27, 2005, the Secretary issued a complaint and notice of hearing directing that a hearing be held on November 30, 2005. The hearing examiner subsequently continued the hearing sua sponte because of a scheduling conflict. The hearing examiner thereafter twice continued the hearing upon the request of SCUPA and without objection by SSHE. On February 14, 2006, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. At the end of SCUPA's case-in-chief, SSHE moved to dismiss the charge for lack of proof (N.T. 46-47). The hearing examiner took the motion under advisement (N.T. 50).¹ On April 24, 2006, SSHE filed a brief by hand-delivery, and SCUPA filed a brief by mail.

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

¹For the reasons set forth below, the motion is hereby denied with respect to the charge under section 1201(a)(1) and granted with respect to the charge under sections 1201(a)(2) and 1201(a)(3).

FINDINGS OF FACT

1. On June 20, 1979, the Board certified SCUPA as the exclusive representative of the following bargaining unit:

"In a subdivision of the employer unit comprised of but not limited to all full-time and regular part-time professional employes [of SSHE] classified as State College University Administrators; and excluding nonprofessional employes, first level supervisors, supervisors, management level employes, confidential employes, and guards, as defined in the Act."

(Case No. PERA-R-11,447-C)

2. Prior to January 2003, SSHE employed DeAnn Martz in a bargaining unit position at Clarion University. (N.T. 19, 54, 60, 83-84; Employer Exhibit 1)

3. On April 22, 2005, Clarion University's associate vice president for finance and administration (Timothy Fogarty) recommended that Ms. Martz be reclassified to a management level position. He based his recommendation upon his review of her job duties. (N.T. 75-78; Employer Exhibit 3)

4. SSHE reclassified Ms. Martz to a management level position. (N.T. 19, 52, 67, 92-93)

5. SSHE did not file with the Board a petition for unit clarification to remove Mr. Martz's position from the bargaining unit. (N.T. 32, 49)

DISCUSSION

SCUPA has charged that SSHE committed unfair practices under sections 1201(a)(1), 1201(a)(2) and 1201(a)(3) by "unilaterally remov[ing] from the Bargaining Unit De[A]nn Martz, Director of Transition Services."

SSHE contends that the charge should be dismissed because it lawfully reclassified Ms. Martz to a management level position outside the bargaining unit.

In Commonwealth of Pennsylvania, Public Utility Commission, 21 PPER ¶ 21057 (Final Order 1990), the Board opined that "[a]lthough an employer has a managerial right to reclassify employes, it violates Section 1201(a)(1) if it removes reclassified employes from a bargaining unit in the absence of a unit clarification from the Board." 21 PPER at 149. The record shows that SSHE reclassified Ms. Martz to a position outside the bargaining unit in the absence of a unit clarification from the Board (findings of fact 4-5). Thus, it is apparent that SSHE violated section 1201(a)(1) as charged.²

SSHE contends that it did not commit an unfair practice by reclassifying Ms. Martz to a position outside the bargaining unit in the absence of a unit clarification from the Board because SCUPA never put it on notice of the need to file for unit clarification. As set forth in its brief at 14, SSHE submits that instead of filing the charge "SCUPA should have made its objection known [via an appeal under the parties' collective bargaining agreement] so that the University could have made a decision on how to proceed in light of such objection." SSHE cites Dubois Area School District v. PLRB, 27 PPER ¶ 27083 (Court of Common Pleas of Clearfield County 1996), for the proposition that no unfair practice occurs if an employer reclassifies an employe to a position outside the bargaining unit upon the agreement of or at least without objection by the exclusive representative of the bargaining unit. As SSHE points out, in holding that an employer

² In its brief at 8-9, SCUPA contends that SSHE also violated section 1201(a)(1) because its reclassification of Ms. Martz to a position outside the bargaining unit would have a tendency to coerce her in the exercise of her right under the Act to seek a reclassification of her position pursuant to a procedure set forth in the parties' collective bargaining agreement without fear of reprisal, but a close review of the charge does not show that SCUPA alleged as much, so the Board has no jurisdiction to find that SSHE committed any such violation of section 1201(a)(1). 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).

violated the Act by removing positions from a bargaining unit, the court in that case noted that the employer did so "without prior clarification from the Board or agreement by the Association." 27 PPER at 184.

SSHE's contention is without merit. Under Commonwealth of Pennsylvania, Public Utility Commission, supra, SSHE was obligated to file for unit clarification before it reclassified Ms. Martz to a position outside the bargaining unit regardless of whether or not SCUPA put it on notice of the need to do so. Nothing in Dubois Area School District provides otherwise. Indeed, although the court in that case noted that the exclusive representative of the bargaining unit had not agreed to the removal of the positions from the bargaining unit, that fact was not dispositive; rather, the dispositive fact was that the employer had removed the positions from the bargaining unit without filing for unit clarification from the Board. Thus, SSHE's reliance on that case is misplaced.

SSHE also contends that it did not commit an unfair practice by reclassifying Ms. Martz to a position outside the bargaining unit in the absence of a unit clarification from the Board because the record shows that she is a management level employe. Under Commonwealth of Pennsylvania, Public Utility Commission, supra, however, the dispositive question is whether or not SSHE reclassified her to a position outside the bargaining unit in the absence of a unit clarification from the Board. Whether or not she is a management level employe is irrelevant to the disposition of that question. Thus, SSHE's contention is without merit.

In Woodland Hills School District, 13 PPER ¶ 13298 (Final Order 1982), the Board opined that a violation of section 1201(a)(2) occurs when an employer's involvement with an employe organization compromises the ability of the employe organization to function independently. SCUPA contends that SSHE violated section 1201(a)(2) because it reclassified Ms. Martz to a position outside the bargaining unit without involving SCUPA in the process, but no violation of section 1201(a)(2) occurs under those circumstances. Thus, there is no basis for finding SSHE in violation of section 1201(a)(2).

In St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977), the court held that a violation of section 1201(a)(3) occurs when an employer discriminates against an employe for having engaged in an activity protected by the Act. A discriminatory motive creates the offense under section 1201(a)(3). Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1992). SCUPA contends that SSHE violated section 1201(a)(3) because it reclassified Ms. Martz to a position outside the bargaining unit for having engaged in the protected activity of seeking a reclassification of her position pursuant to a procedure set forth in the parties' collective bargaining agreement, but the record does not show that to be the case. To the contrary, the record shows that SSHE reclassified Ms. Martz to a position outside the bargaining unit because its review of her job duties led it to believe that she was a management level employe (findings of fact 3-4). No discriminatory motive is apparent on that record. Thus, there is no basis for finding SSHE in violation of section 1201(a)(3). See also Forest Area School District, 19 PPER ¶ 19116 (Final Order 1988) (the removal of an employe to a position outside the bargaining unit will not in and of itself support a finding of a discriminatory motive on the part of the employer).

CONCLUSIONS

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

1. SSHE is a public employer under section 301(1) of the Act.
2. SCUPA is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. SSHE has committed an unfair practice under section 1201(a)(1) of the Act.
5. SSHE has not committed unfair practices under sections 1201(a)(2) and 1201(a)(3) 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 SSHE shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in article IV of the Act.

2. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the Act:

(a) Reinstate Ms. Martz as a member of the bargaining unit and make her whole for any loss of pay or benefits resulting from its removal of her from the bargaining unit;

(b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completing and filing the attached affidavit of compliance.

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 tenth day of May 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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May 10, 2006

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STATE SYSTEM OF HIGHER EDUCATION
Case No. PERA-C-05-283-E

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

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Marc C. Kornfeld
Jeffrey Cooper, Esquire
Thomas M. Krapsho
Todd A. Brownfeld, Esquire