COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LINDA SAYLOR	:	
	:	
v.	:	Case No. PERA-C-05-381-E
	:	
YEADON BOROUGH	:	
LYNETTE DAVID	:	
	:	
	:	Case No. PERA-C-05-382-E
	:	
YEADON BOROUGH	:	

PROPOSED DECISION AND ORDER

Two charges of unfair practices were filed with the Pennsylvania Labor Relations Board (Board) on September 5, 2005; one by Linda Saylor and one by Lynette David. Both charges alleged that Yeadon Borough violated Section 1201(a)(1), (2), (3), and (4) of the Public Employe Relations Act (Act).

On October 24, 2005, the Secretary of the Board issued a complaint and notice of hearing for each charge wherein hearings were set for November 18, 2005 in Media, Pennsylvania. After an unopposed continuance was granted the cases were listed for hearing on February 22, 2006 and on that date a hearing was held and all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. All parties filed post-hearing briefs.

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.

FINDINGS OF FACT

1. Linda Saylor and Lynette David are both public employes.

2. The Borough is a public employer.

3. David was a Borough employe for ten years. Saylor worked for the Borough starting in April of 2002. (N.T. 12, 39)

4. Around June 1, 2005, Saylor, David and some other administrative employes of the Borough met with an SEIU[1] organizer at a local diner and most who attended signed union cards. The next day a sympathetic employe who had not attended the diner meeting signed a union card in the Borough building. (N.T. 18, 19, 43-45)

5. On or about June 14, 2005 Saylor, David and another administrative employe who attended the diner meeting, Glass-Houser, were all given letters of termination. But for the employe's name, these letters were identical in that each gave a borough-wide restructuring plan and accompanying elimination of position as the reason for the terminations. (N.T. 22-24, 44, 47-49, 97, 98).

6. Two days after their termination the Borough Council voted to formally adopt the restructuring plan. Nevertheless, the restructuring plan never took effect and the same three positions that were supposedly eliminated were advertised in the local paper one week after the terminations. (N.T. 25, 49, 50, 59, 60, 98, 90, 95, 96, 109; Saylor Exhibit 4, David Exhibit 2).

[1] Service Employes International Union

DISCUSSION

Saylor and David each allege that the Borough violated the Act when it dismissed them under a purported reorganization plan which never came to fruition. Their dismissal came close on the heels of a union organizing drive in which these two employes were instrumental. Nevertheless, this charge must be dismissed because there is insufficient proof that the Borough had notice of Saylor's and David's organizing efforts.

An employer commits unfair practices within the meaning of sections 1201(a)(1) and 1201(a)(3) of the Act if it discriminates against an employe for having engaged in activity protected by the Act. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). In order to prove a charge alleging as much, the charging party must establish by substantial evidence that the employe engaged in activity protected by the Act, that the employer knew that the employe engaged in activity protected by the Act and that the employer took action against the employe because the employe engaged in activity protected by the Act. Id. If the charging party does not present a prima facie case in that regard, the charge is to be dismissed. Perry County v. PLRB, 364 A.2d 808 (Pa. Cmwlth. 1994). In deciding whether or not the charging party has presented a prima facie case, only the testimony and documentary evidence submitted during its case in chief are to be considered. Temple University, 23 PPER P. 23033 (Final Order 1992).

Turning first to the question of whether or not Saylor and David engaged in activity protected by the Act, testimony shows that Saylor and David established their attendance at organizational meetings held by SEIU, and subsequently expressed their support for SEIU. Clearly then they both engaged in activity protected by the Act.

The sockdolager for Saylor and David is that they have not proved knowledge by the Borough of their protected activity. The record shows that these two employes were supportive of SEIU's organizing the workplace; it does not establish that the Borough knew specifically of their support. Moreover, even an employer's knowledge of union support generally among its employes is insufficient to support a violation of the Act according to the Board:

> Even where employes have conducted their protected activities openly we further require a showing of employer knowledge and a connection between that knowledge and the active employes' dismissals. University of Pittsburgh Book Center, 14 PPER § 14214 (Final Order, 1983). Absent specific knowledge of the individual complainants' union activities the mere general knowledge of union activity alone does not lead us to conclude the [employer's] underlying motive was to discriminate against employes for protected activity. 'Suspicion ... cannot be substituted for evidence.' PLRB v. Sansom House Enterprise, 378 Pa. 385, 391, 106 A.2d 404, 408 (1954).

Temple University, 23 PPER § 23033 at 64 (Final Order, 1992).

Here there is no evidence that the Borough was even generally aware of the organizational activities before it took the adverse action against Saylor and David.[2] To state the obvious, the Borough's lack of knowledge that Saylor and David engaged in activity protected by the Act means that the Borough did not terminate either Saylor or David for activity protected by the Act. An employer's knowledge of protected activity is a necessary point d'appui of a successful discrimination charge under the Act. These two charges are, therefore, dismissed.

CONCLUSIONS

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

1. The Township is a public employer within the meaning of Section 301(1) of the Act.

[2] Neither Saylor nor David argues for the application of the small plant doctrine. And indeed, even if they had, there is insufficient record evidence to apply it successfully. Temple University, 23 PPER ¶ 23033 (Final Order, 1992); Teamsters, Local #764 v. Montour County, 35 PPER 147 (Final Order, 2004).

2. Saylor and David are public employes within the meaning of Section 301(2) of the Act.

4. The Board has jurisdiction over the parties hereto.

5. The Borough has not committed unfair practices within the meaning of Section 1201(a)(1), (2), (3) and (4) 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 two charges of unfair practices are dismissed and the respective complaints issued thereon are 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 at Harrisburg, Pennsylvania, this eleventh day of May, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

May 11, 2006

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

Sincerely,

Timothy Tietze
Hearing Examiner

Enclosure

cc: Yeadon Borough