COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 668	:	
v.	:	Case No. PERA-C-05-505-W
BEAVER COUNTY GERARD MIKE BEVERLY SULLIVAN	:	

PROPOSED DECISION AND ORDER

On October 31, 2005, Service Employees International Union Local #668 (SEIU) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the County of Beaver, Gerard Mike and Beverly Sullivan (County)[1] had violated sections 1201(a)(1), 1201(a)(2), 1201(a)(3) and 1201(a)(5) of the Public Employe Relations Act (Act) by "requiring bargaining unit members to put in writing a detailed accounting of their work activities and schedule" shortly after the Board conducted a representation election for them, by "chang[ing] the flex-time policy for the newly organized bargaining unit members" and by "inform[ing] a bargaining unit member her 7th year annual pay step increase due in November, previously approved in January (before the election), would not be paid because of the Union election."[2] On December 7, 2005, 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 February 28, 2006, if conciliation did not resolve the charge by then. On December 22, 2005, the County filed an answer and new matter denying that it had committed unfair practices. On February 28, 2006, the hearing was held. Based on a representation by the County that it had implemented a flex-time policy as proposed by SEIU after the charge was filed (Union Exhibit 1), SEIU withdrew the charge insofar as it alleges that the County committed unfair practices by "chang[ing] the flex-time policy for the newly organized bargaining unit members" (N.T. 6-8). Both parties were then afforded a full opportunity to present evidence and to cross-examine witnesses. On April 6, 2006, the County filed a brief. On April 13, 2006, SEIU filed a brief.

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

FINDINGS OF FACT

1. On August 1, 1974, the Board certified SEIU as the exclusive representative of a bargaining unit comprised of employes of the County in its Bureau of Child Welfare Services. (Case No. PERA-R-5038-W)

2. On July 18, 2005, SEIU filed a petition for representation to include in the bargaining unit employes of the County in its Office on Aging and in its Office of MHMR/D&A. (Case No. PERA-R-05-271-W)

---

[1] SEIU has charged Mr. Mike and Ms. Sullivan as agents of the County. As agents of the County, however, they would not be personally liable for any unfair practices they may have committed; rather, the County as their principle would be liable for any unfair practices they may have committed. See 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 principle is liable for the unfair practices committed by its agents). Thus, the charge will be construed as having been filed against the County alone.

[2] The charge does not state a cause of action under section 1201(a)(2), so the charge as filed under that section is dismissed at the outset. See Woodland Hills School District, 13 PPER ¶ 13298 (Final Order 1982)(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).

3. On September 20, 2005, the Board conducted an election to determine the exclusive representative, if any, of a bargaining unit comprised of employes in the Office on Aging, the Office of Children and Youth Services (formerly known as the Bureau of Child Welfare Services) and the Office of MHMR/D&A. (Case No. PERA-R-05-271-W)

4. On September 28, 2005, a supervisor (Herta Madder) in the Office of MHMR/D&A held a staff meeting for the children's unit at which she told employes working primarily in the office that they were to submit on a weekly basis schedules of their appointments and activities as employes working primarily in the field were already required to do and that the schedules they all were to submit were to contain more detail than the schedules the employes working primarily in the field had been submitting to date. (N.T. 16, 24-25, 32, 37-42, 45-46, 53; Union Exhibit 3)

5. On September 30, 2005, the Board certified SEIU as the exclusive representative of a bargaining unit comprised of employes in the Office on Aging, in the Office of Children and Youth Services and in the Office of MHMR/D&A. (Case No. PERA-R-05-271-W)

6. Effective November 12, 2005, the County stopped paying step increases to employes in the Office on Aging and in the Office of MHMR/D&A. (Union Exhibit 2)

DISCUSSION

The positions of the parties

SEIU has charged that the County committed unfair practices by "requiring bargaining unit members to put in writing a detailed accounting of their work activities and schedule" shortly after the Board conducted a representation election for them and by "inform[ing] a bargaining unit member her 7th year annual pay step increase due in November, previously approved in January (before the election), would not be paid because of the Union election." In its brief, SEIU contends that the County was motivated by union animus when it imposed the requirement to submit detailed activity and work schedules and that the County changed the status quo and therefore was in violation of its obligation to bargain changes in pay when it refused to pay step increases for newly organized employes in the Office on Aging and in the Office of MHMR/D&A.[3] SEIU also contends in its brief that the County was motivated by union animus when it read policies verbatim at staff meetings shortly after the Board conducted the representation election.

The County contends that the charge should be dismissed because its imposition of the requirement to submit detailed activity and work schedules was not motivated by union animus,[4] because it maintained the status quo when it refused to pay the step increases and therefore was under no obligation to bargain the matter and because SEIU did not timely file a charge alleging that the County committed unfair practices by reading policies verbatim at staff meetings.

The applicable law

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(3) if it discriminates against employes for engaging in activity protected by the Act. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). In order to prove unfair practices under sections 1201(a)(1) and 1201(a)(3), the charging party must present during its case-in-chief a prima facie case of discrimination. Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993). The employer is under no obligation to present a defense to the charge unless the charging party presented a prima facie case of discrimination during its case-in-chief. Id. The timing of events alone provides an insufficient basis for finding that an employer violated sections 1201(a)(1) and 1201(a)(3). Pennsylvania

[3] SEIU does not contend that the County committed unfair practices by refusing to pay step increases to previously organized employes in the Office of Children and Youth Services.

[4] The County also contends that the charge should be dismissed because it was under no obligation to bargain the requirement to submit detailed activity and work schedules, but SEIU does not contend that the County committed unfair practices by refusing to bargain the matter, so the County's contention in this regard need not be addressed.

State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005)(construing analogous provisions of the Pennsylvania Labor Relations Act (PLRA)).

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(5) if it unilaterally changes employe terms and conditions of employment after the Board has certified an exclusive representative for the employes. Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978). An employer does not change employe terms and conditions of employment if it refuses to pay step increases for employes whose wages are subject to negotiation. Pennsylvania State Park Officers Association, supra.

The Board only has jurisdiction to find the unfair practices alleged in a charge. 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). Evidence of post-charge conduct may be relied upon to shed light on the true character of the events set forth in a charge, PLRB v. General Braddock Area School District, 380 A.2d 946 (Pa. Cmwlth. 1977), but post-charge conduct may not form the sole basis for the finding of an unfair practice. Commonwealth of Pennsylvania, Pennsylvania State Police, 37 PPER 4 (Final Order 2006)(construing analogous provisions of the PLRA). Any finding of an unfair practice must be supported by substantial evidence. St. Joseph's Hospital, supra.

The requirement to submit detailed activity and work schedules

SEIU has charged that the County committed unfair practices by "requiring bargaining unit members to put in writing a detailed accounting of their work activities and schedule" shortly after the Board conducted a representation election for them. SEIU contends that the County's imposition of the requirement was motivated by union animus. During its case-in-chief, SEIU established that the County imposed the requirement eight days after the representation election (findings of fact 3-4). Apart from the timing of events, however, SEIU did not establish any other basis for finding that the County's imposition of the requirement was motivated by union animus. The timing of events alone provides an insufficient basis for finding that an employer was motivated by union animus. Pennsylvania State Park Officers Association, supra. Thus, SEIU's contention finds no support in the record.

The pay step increases

SEIU has charged that the County committed unfair practices by "inform[ing] a bargaining unit member her 7th year annual pay step increase due in November, previously approved in January (before the election), would not be paid because of the Union election." SEIU contends that the County changed the status quo and therefore was in violation of its obligation to bargain changes in pay when it refused to pay step increases for newly organized employes in the Office on Aging and in the Office of MHMR/D&A. SEIU established that the County refused to pay step increases for those employes effective November 6, 2005 (finding of fact 6), but the charge was filed before then on October 31, 2005, so the Board has no jurisdiction to find that the County committed unfair practices by refusing to pay step increases for those employes. See Commonwealth of Pennsylvania, Pennsylvania State Police, supra (post-charge conduct may not form the sole basis for the finding of an unfair practice).

The charge is without merit in any event because an employer does not change employe terms and conditions of employment if it refuses to pay step increases for employes whose wages are subject to negotiation. As the court explained in Pennsylvania State Park Officers Association, supra, because wages are subject to negotiation, to find otherwise "would allow employees to gain an unfair advantage over their public employers by obtaining the very wage increases under negotiation. This would discourage good faith negotiations[.]" 854 A.2d at 682.

SEIU contends that Pennsylvania State Park Officers Association is inapposite because that case dealt with employes subject to an expired collective bargaining agreement while the employes at issue here have never had a collective bargaining agreement. SEIU misapprehends the scope of that case. As the court in that case explained:

> "We also disagree with Complainants' suggestion that the definition of '*status quo*' should vary according to the context in which a controversy arises. Our Supreme Court has established that the *status quo* is always the 'last actual, peaceable and lawful non-contested status which preceded [a] controversy.' Fairview [School District v. UCBR], 499 Pa. [539] at 544, 454 A.2d [517] at 520 [(1982)]. It is a theoretical level playing field on which the parties begin negotiations for a successor agreement. It matters not whether the underlying controversy involves a labor dispute or eligibility for unemployment benefits. In our view, it would only lead to confusion to define the *status quo* differently from one situation to the next."

854 A.2d at 682-683. Thus, contrary to SEIU's contention, Pennsylvania State Park Officers Association applies regardless of the context in which a pay dispute arises.[5]

The reading of policies verbatim at staff meetings

SEIU contends that the County committed unfair practices by reading policies verbatim at staff meetings shortly after the Board conducted the representation election. The charge may be searched in vain, however, for any allegation that the County committed unfair practices by reading policies verbatim at staff meetings. Thus, the Board has no jurisdiction to find the County in violation of the Act for having read policies verbatim at staff meetings. See Commonwealth of Pennsylvania (Liquor Control Board), supra (the Board only has jurisdiction to find the unfair practices alleged in a charge).

CONCLUSIONS

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

1. The County is a public employer under section 301(1) 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 County has not committed unfair practices under sections 1201(a)(1), 1201(a)(2), 1201(a)(3) or 1201(a)(5) 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 complaint is rescinded and the charge 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 second day of May 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

_____

Donald A. Wallace, Hearing Examiner

[5] It is noted that a different result obtains if an employer refuses to pay step increases while a petition for representation is pending. As a hearing examiner explained in Palmerton School District, 30 PPER ¶ 30176 (Proposed Decision and Order 1999), an employer coerces employes in the exercise of their right to select an exclusive representative if it withholds a previously promised pay increase while a petition for representation is pending.

Direct Dial
717-783-6025

Fax Number
717-783-2974

May 2, 2006

Rick Adams,
SEIU Local 668
Renaissance Center, Suite 715
1001 State Street
Erie, PA 16501

John A. McCreary, Esquire
BABST CALLAND CLEMENTS and ZOMNIR PC
Two Gateway Center 8th Fl
Pittsburgh, PA 15222

BEAVER COUNTY, GIRARD MIKE, BEVERLY SULLIVAN
Case No. PERA-C-05-505-W

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

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Beaver County Commissioners
Girard Mike
Beverly Sullivan
Pittsburgh Regional Office