

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CAMERON COUNTY EDUCATIONAL :  
SUPPORT PERSONNEL ASSOCIATION :  
PSEA/NEA :  
 :  
v. : Case No. PERA-C-04-528-W  
 :  
CAMERON COUNTY SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On October 26, 2004, the Cameron County Educational Support Personnel Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Cameron County School District (District) violated Section 1201(a)(1), (2), (3), (4) and (9) of the Public Employe Relations Act (PERA).<sup>1</sup> On February 23, 2005, the Secretary of the Board issued a complaint and notice of hearing.

On March 14, 2005, the District filed a motion for a more specific complaint. The Association responded to the District's motion on April 11, 2005. The Association filed an additional response to the District's motion on May 12, 2005, in which it withdrew paragraph 19 of its specification of charges.

A hearing was held before a Board hearing examiner on November 10, 2005, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The District filed a post-hearing brief on January 12, 2006. The Association filed a brief on January 17, 2006.

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**

1. The District is a public employer for purposes of the PERA.
2. The Association is an employe organization for purposes of PERA.
3. The District currently employs Jean Skinner in the position of high school clerk. (N.T. 11)
4. On April 30, 2002, the Board issued a nisi order of certification certifying the Association as the exclusive representative of a bargaining unit which is comprised of the District's nonprofessional employes. On June 13, 2002, the Board issued a final order which dismissed the District's exceptions to the nisi order of certification. (N.T. 10, 13; Complainant Exhibits 1, 2)
5. Skinner contacted the Association to obtain representation for the District's nonprofessional employes. Skinner met with the employes, advised them that she had contacted the Association, and informed them of her opinion regarding the advantages of union representation. (N.T. 14-15)
6. Skinner was elected as president of the Association in 2002 and continued to serve as president through 2004. (N.T. 14-15)

---

<sup>1</sup> The charges under Section 1201(a)(2), (4) and (9) of PERA must be dismissed because the Association failed to prove: (1) that the District dominated or interfered with the Association; (2) that the District discriminated against an employe for signing or filing an affidavit, petition or complaint with the Board, or giving any information or testimony before the Board; and (3) that the District did not comply with the requirements of "meet and discuss."

7. The District and the Association commenced negotiations for an initial collective bargaining agreement (CBA) in December 2002. (N.T. 15, 26)

8. Both the District and the Association accepted a factfinder's report that was issued in November 2004. As a result, the parties entered into a CBA in December 2004. (N.T. 15-16, 27-28)

9. While the CBA was being negotiated, the Association did not engage in a strike. (N.T. 22)

10. Skinner attended all of the bargaining sessions between the Association and the District. Ordinarily several other employees also attended the bargaining sessions. (N.T. 15, 26-27, 49-50)

11. The Association's spokesperson at the bargaining table was Terra Begolly, who is a PSEA uniserv representative. (N.T. 26-27, 49-50)

12. The District's negotiating team consisted of Attorney Christian Mattie, who was the chief negotiator for the District, and Carl Mitchell, who is the District's business manager and board secretary. (N.T. 48-49)

13. The District's negotiating team did not include any members of the school board. (N.T. 48-49)

14. Skinner was not particularly vocal during the negotiations. (N.T. 49-50)

15. In April 2004, Skinner applied for the vacant position of high school principal's secretary. (N.T. 16-18; Complainant Exhibit 11)

16. There were ten candidates for the vacant position sought by Skinner. (N.T. 34)

17. The District has employed Dr. Stephen Bugaj as its superintendent for approximately five years. (N.T. 33, 36)

18. During Dr. Bugaj's tenure as superintendent, a committee that includes members of the school board has screened applicants for various positions, including the position at issue. The committee interviews and evaluates the candidates and makes a recommendation to the full school board regarding whom to hire. (N.T. 34-39, 41-42, 45)

19. A committee of four school board members, the superintendent and the high school principal (Dr. Ronald Wilson) conducted the interviews for the position at issue. (N.T. 34-39, 41-42, 45)

20. Skinner had previously performed the duties of the high school principal's secretary on a fill-in basis. (N.T. 11-13)

20. Skinner was not selected for the vacancy at issue. Rather, another candidate (Kristen Focht) was selected. Focht had received the unanimous recommendation of the interview committee. (N.T. 18-19, 43-44)

21. Skinner was not advised of the reason why she was not selected for the vacancy. (N.T. 18-19)

#### DISCUSSION

The Association alleges that the District did not appoint Jean Skinner to the vacant position of high school principal's secretary in retaliation for her protected activity. The District contends that the Association failed to prove a causal connection between Skinner's protected activity and the District's decision to select another candidate for the secretarial position.

The burden of proof in a discrimination case was aptly described in Montgomery County Sheriff, 34 PPER 154 (Proposed Decision and Order, 2003) as follows:

"In order to sustain a charge of discrimination under Section 1201(a)(3) of the Act, the Union must prove a prima facie case. The elements of a prima facie case are: 1) that the employe engaged in protected activity; 2) the employer was aware of that protected activity; and 3) but for the protected activity, the adverse action would not have been taken against the employe. St. Joseph's Hospital [v. PLRB], 473 Pa. 101, 373 A.2d 1069 (1977). The Union must establish these three elements by substantial evidence. Substantial evidence is more than a mere suspicion. Shive v. Bellefonte Area Board of School Directors, 317 A. 2d 311 (Pa. Cmwlth. 1974). In a charge of discrimination it is the employer's motivation which creates the offense. Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993) . . . .

It is, however, only after a prima facie case has been shown that the burden of production shifts to the employer to demonstrate that the same action would have been taken absent protected activity. Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 (Final Order, 1992) . . . ."

34 PPER at 470.

The Association contends that it established a prima facie case of discrimination "[g]iven the timing of the vacancy and interview process, i.e., during difficult and antagonistic collective bargaining, and given the extent of Ms. Skinner's union activity coupled with no explanation from the employer" (Association's brief at 12). However, as the hearing examiner stated in Montgomery County Sheriff, the employer does not have the burden of establishing a non-discriminatory reason for its action unless the union establishes a prima facie case of discrimination. Accord Temple University, 23 PPER ¶ 23033 (Final Order, 1992); Adams Township, 36 PPER 119 (Proposed Decision and Order, 2005), \_\_\_ PPER \_\_\_ (Final Order, 2005). Thus, the threshold issue is whether the Association met its burden of proving a prima facie case.

The Association satisfied the first two elements of its burden of proof under St. Joseph's Hospital. Skinner was the Association president from 2002 through 2004 and she attended all of the bargaining sessions for the initial CBA between the District and the Association (FF 6-7, 10-12). A member of the District's negotiating team acknowledged in his testimony that Skinner attended the bargaining sessions (N.T. 49-50), and the District concedes in its brief (p. 3) that it was aware that Skinner was an Association officer. Thus, Skinner engaged in protected activity and the District was aware of this activity.

In arguing that a discriminatory motive should be inferred for the District's adverse employment decision, the Association also contends that Skinner was the leading union organizer among the support staff. The Association's witnesses testified that Skinner contacted the Association concerning representation for the District's nonprofessional employes, and then met with the other nonprofessional employes and spoke in favor of securing union representation (FF 5). However, as the District points out in its brief, the Association failed to prove that the District was aware of Skinner's union organizing activity. Given the absence of evidence that the District was aware of Skinner's union organizing activity, the extent of such activity does not warrant an inference of anti-union animus on the part of the District. Moreover, Skinner's organizing activity occurred approximately two years before she applied for the position in dispute (FF 4-5, 15). As the examiner noted in Montgomery County Sheriff, supra, quoting Beaver Valley Intermediate Unit, 26 PPER ¶ 21006 at 19 (Final Order, 1989), "a lengthy time period between the protected activity and the action complained of does serve to undermine the attempt to establish an unlawful motive." 34 PPER at 471.

Although Skinner attended all of the bargaining sessions for the initial CBA between the parties (FF 7, 10), she was not the spokesperson for the Association and was not particularly vocal during the negotiations (FF 11, 14). Nor is there any evidence regarding other interaction that Skinner may have had with the District in her role as

Association president. Therefore, I do not find Skinner's protected activity (of which the District was aware) to be so extensive and of such concern to the District to warrant an inference of anti-union animus.

The Association offered only conclusory testimony that the bargaining between the parties was "hard" and "antagonistic" (N.T. 15, 27), while offering no foundation for its witnesses' conclusions. The facts of record simply indicate that the negotiation process was lengthy, with no strike by the Association and ultimate agreement by the parties through mutual acceptance of a factfinder's report (FF 7-9). Although the District did fail to select Skinner for the secretarial position during lengthy contract negotiations that she attended on behalf of the Association, timing of protected activity, standing alone, is insufficient to infer an unlawful motive. Beaver Valley Intermediate Unit, supra. Thus, I find that the Association failed to prove a prima facie case of discrimination. Accordingly, the District did not have the burden of establishing a non-discriminatory reason for its action<sup>2</sup> and the charge of unfair practices must be dismissed.

#### CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of the Act.
2. The Association is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The District has not committed unfair practices in violation of 1201(a)(1), (2), (3), (4) or (9) of PERA.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint issued thereon is 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 this thirtieth day of January, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

---

PETER LASSI, Hearing Examiner

January 30, 2006

---

<sup>2</sup> Consequently, I need not address the Association's argument concerning drawing an adverse inference from the District's failure to call school board members to testify. The Association concedes in its brief (pp. 11-12) that such an inference would not be warranted where the District does not have some burden of proof. Because the Association failed to establish a prima facie case of discrimination, the burden of production never shifted to the District.

William A. Hebe, Esquire  
SPENCER GLEASON HEBE & RAGUE  
17 Central Avenue  
PO Box 507  
Wellsboro, PA 16901

Richard W. Perhacs, Esquire  
KNOX MCLAUGHLIN GORNALL  
& SENNETT PC  
120 W Tenth St  
Erie, PA 16501-1461

CAMERON COUNTY SCHOOL DISTRICT  
Case No. PERA-C-04-528-W

Enclosed is a copy of the proposed decision and order in the above-captioned matter.

Sincerely,

PETER LASSI  
Hearing Examiner

Enclosure

cc: Cameron County School District  
Pittsburgh Regional Office