

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TIMOTHY A. EIRICH, AARON RENDOS :
AND COUDERSPORT AREA EDUCATION :
ASSOCIATION :
:
v. : Case No. PERA-C-07-348-E
:
COUDERSPORT AREA SCHOOL DISTRICT :

FINAL ORDER

The Complainants, Timothy A. Eirich, Aaron Rendos and the Coudersport Area Education Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 30, 2008, challenging a Proposed Decision and Order (PDO) issued on May 13, 2008. In the PDO, the Board's Hearing Examiner concluded that the Coudersport Area School District (District) did not violate Aaron Rendos' Weingarten¹ rights and therefore did not commit unfair practices under Section 1201(a)(1) of the Public Employe Relations Act (PERA). The District did not file a response to the Complainants' exceptions.

The Hearing Examiner's Findings of Fact (FF) are summarized as follows. Sometime between April 4 and April 6, 2007, Mr. Rendos, a non-tenured professional employe who teaches fifth and sixth grade, received notice to report to the office of Coudersport Elementary School Principal Sherri Cowburn for a pre-observation conference at 8:45 a.m. on April 11, 2007. The purpose of the pre-observation conference was for Ms. Cowburn to give Mr. Rendos clear and concise direction on how to improve and make corrections in his instructional techniques. Having previously received an unsatisfactory rating, Mr. Rendos was aware that he could be discharged if he received another unsatisfactory rating. Accordingly, Mr. Rendos contacted his Association representative, Mr. Eirich, and asked him to provide representation at this conference. Mr. Eirich is a professional employe who teaches fifth grade and has served as the Association building representative for fifteen years.

When Mr. Rendos and Mr. Eirich arrived for the scheduled meeting, Ms. Cowburn told Mr. Eirich to return to his class or he would be written up for insubordination. Ms. Cowburn took this position regarding Mr. Eirich's attendance at the meeting because Mr. Eirich did not follow established protocol concerning arranging for someone to cover his class. That protocol requires that the teacher inform the principal's office that he or she has a meeting during class time, so that the office can arrange for a substitute. Rather than following this procedure, Mr. Eirich privately arranged for another teacher to monitor his class without notifying the principal's office. The teacher that Mr. Eirich chose to cover his class had to split her time between two classrooms, requiring her to leave her own students unattended while checking on Mr. Eirich's students. After Ms. Cowburn stated that Mr. Eirich could not attend the meeting, Mr. Eirich and Mr. Rendos met privately and requested that the meeting be scheduled for a time after school. Ms. Cowburn granted this request. The meeting subsequently occurred later that day after school with Mr. Eirich present. Nothing substantive occurred before the morning meeting was cancelled.

The Association's charge alleged that the District committed unfair practices in violation of Section 1201(a)(1), (2), (5) and (9) of PERA by violating Mr. Rendos' Weingarten rights. At the hearing, the Association withdrew its allegations that the District violated Section 1201(a)(2), (5) and (9). In finding that the District did not violate Section 1201(a)(1), the Hearing Examiner rejected the Association's argument that a Weingarten violation occurred, as the meeting was ultimately held after school with Mr. Rendos' representative of choice in attendance.

¹ The Board has adopted the rule set forth in National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251, 95 S.Ct. 959 (1975) that employes have the right to union representation at investigatory interviews that they reasonably believe may result in discipline. Commonwealth, Office of Administration v. PLRB, 591 Pa. 176, 916 A.2d 541 (2007).

In its exceptions, the Association argues that Mr. Rendos had to endure seeing his representative being threatened with insubordination if he did not leave the originally scheduled morning meeting. The Association argues that if not the letter, then the spirit, of Weingarten was violated by Ms. Cowburn's actions in this case. Accordingly, the Association contends that the Hearing Examiner erred by failing to find a violation of Section 1201(a)(1) of PERA. The Association further argues that the Hearing Examiner's finding regarding the proper protocol for arranging classroom coverage is not supported by the evidence.²

First, with regard to the Hearing Examiner's finding that Mr. Eirich violated a policy of the District regarding obtaining coverage for his classroom, it is well-settled that findings of a Board Hearing Examiner will be sustained if they are supported by substantial evidence. Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942) (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1938)). In making relevant findings of fact, the Hearing Examiner may choose to credit or discredit any testimony or evidence, in whole or in part. Pennsylvania State Corrections Officers Association v. Commonwealth, Department of Corrections Pittsburgh SCI, 34 PPER ¶ 134 (Final Order, 2003). Absent compelling reasons, the Board will not disturb the credibility determinations of its Hearing Examiners, who are able to observe the manner and demeanor of the witnesses during their testimony. Fraternal Order of Police, Lodge No. 85 v. Commonwealth of Pennsylvania, 18 PPER ¶18093 (Final Order, 1987).

Upon review of the record, we conclude that the Hearing Examiner's finding is supported by substantial evidence. Ms. Cowburn testified regarding the existence of the policy and the Hearing Examiner explained that he credited her testimony over that of Mr. Eirich "based upon the demeanor, confidence, specificity, candor and detail of the testimony ..." (PDO, pp. 3-4, n. 5). Moreover, the Association presents no compelling reasons to reverse the Hearing Examiner's credibility determinations. Therefore, we must dismiss the Association's exception to the Hearing Examiner's finding of fact on this issue.

As to the Association's argument regarding a Weingarten violation, it is well settled that public employees in Pennsylvania have Weingarten rights. See, e.g., Office of Administration, supra; Duryea Borough Police Department v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 2004); AFSCME, Council 13 v. PLRB, 514 A.2d 255 (Pa. Cmwlth. 1986); PLRB v. Conneaut School District, 10 PPER 10092 (Nisi Decision and Order, 1979), affirmed, 12 PPER 12155 (Final Order, 1981); PLRB v. Township of Shaler, 11 PPER 11347 (Nisi Decision and Order, 1980). In Township of Shaler, the Board explained that three elements must be met in order to establish a violation of Weingarten rights:

First, the Complainant must demonstrate that he reasonably believed that the interview might result in disciplinary action. Second, the Complainant must request that a union representative be present and . . . such request must be denied. Finally . . . subsequent to the employer's denial of representation, the employer must compel the employe to continue with the interview.

11 PPER at 559. Further, in Office of Administration, supra, the Supreme Court of Pennsylvania held that

the Weingarten right of an individual employee, that is, the right to obtain a representative to accompany the employee during an interview when the employee reasonably fears that discipline may be imposed by the employer, includes the right to have the union representative of his or her choice, if the assisting union representative is reasonably available and absent extenuating circumstances.

Id. at 193, 916 A.2d at 551 (emphasis added).

² The Association also argues that the Hearing Examiner erred in noting in a footnote the apparent conflict in the testimony regarding the subject taught by Mr. Rendos (PDO at 2, n.2). However, the Hearing Examiner did not make a finding regarding the particular subject or subjects taught by Mr. Rendos, nor would such a finding be relevant to the decision in this matter. Accordingly, this exception is dismissed.

The facts as found by the Hearing Examiner, which are supported by substantial, credible evidence, show that Mr. Eirich was not reasonably available for the morning meeting between Mr. Rendos and Ms. Cowburn because he did not follow established protocol in arranging for coverage of his classroom. Thus, Weingarten was not violated when Ms. Cowburn told Mr. Eirich to return to his classroom. Further, because the meeting was not actually conducted until the afternoon with Mr. Eirich in attendance, Mr. Rendos was not compelled to meet with his employer without union representation. Therefore, it is clear that no Weingarten violation occurred.

After a thorough review of the exceptions, the brief in support and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that the District did not commit unfair practices in violation of Section 1201(a)(1) of PERA.

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Complainants are hereby dismissed, and the May 13, 2008 Proposed Decision and Order be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, Anne E. Covey, Member, and James M. Darby, Member, this nineteenth day of August, 2008. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.