

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL UNION :  
LOCAL 668 PSSU :  
 :  
v. : Case No. PERA-C-08-24-W  
 :  
BEAVER COUNTY :

**PROPOSED DECISION AND ORDER**

On January 28, 2008, SEIU Local 668, Pennsylvania Social Services Union (Local 668), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the County of Beaver (County) violated sections 1201(a)(1) and 1201(a)(3) of the Public Employee Relations Act (Act) by notifying Local 668 that employees who had participated in a strike would not receive a perfect attendance bonus. On February 14, 2008, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on March 21, 2008, if conciliation did not resolve the charge by then. On February 26, 2008, the County filed an answer and new matter. The County admitted to a number of factual averments in the charge. The County also alleged that the complaint nevertheless should be dismissed because under applicable collective bargaining agreements and section 1006 of the PERA the employees had no right to the perfect attendance bonus once they engaged in the strike. On March 14, 2008, the hearing examiner, upon the request of the County and without objection by Local 668, continued the hearing to April 30, 2008. On April 30, 2008, the hearing was held. The parties submitted stipulations in lieu of testimony. Neither party filed a brief. On May 9, 2008, the record of the hearing was filed with the Board.

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

FINDINGS OF FACT

1. Local 668 and the County were parties to collective bargaining agreements providing that "[i]f a full time employee has perfect attendance from June 1 to November 30 of any year, such employee shall receive One (1) bonus personal day to be taken in the next Six (6) months." (N.T. 5-6)
2. On November 2, 2007, Local 668 engaged in a one-day strike. (Pleadings)
3. On or about December 3, 2008, the County notified Local 668 that employees who had participated in the strike would not receive a perfect attendance bonus. (Pleadings)

DISCUSSION

SEIU has charged that the County committed unfair practices under sections 1201(a)(1) and 1201(a)(3) by notifying Local 668 that employees who had participated in a strike would not receive a perfect attendance bonus. As set forth in the specification of charges, Local 668 contends that "[t]his type of action by an employer serves to discourage employees from engaging in protected activity."

The County contends that the complaint should be dismissed for lack of proof. In the County's view, under applicable collective bargaining agreements and section 1006 of the PERA, the employees had no right to the perfect attendance bonus once they engaged in the strike, so there is no basis for finding the County in violation of sections 1201(a)(1) and 1201(a)(3).

An employer commits an unfair practice under section 1201(a)(1) if "in light of the totality of circumstances, the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Somerset Area School District, 34 PPER 89 at 270 (Final Order 2003).

An employer commits an unfair practice under section 1201(a)(3) if it discriminates against employees because they engaged in an activity protected by the PERA. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

In order to prevail on a discrimination charge, the charging party must show by substantial evidence during its case-in-chief that the employees engaged in a protected activity, that the employer knew that they had done so and that the employer took action against them for having done so. Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1994). Because "[t]he motive creates the offense," PLRB v. Stairways, Inc., 425 A.2d 1172, 1175 (Pa. Cmwlth. 1981), no violation of sections 1201(a)(1) and 1201(a)(5) may be found if the employer's conduct was not motivated by a discriminatory intent. Somerset Area School District, supra.

The record shows that Local 668 and the County were parties to collective bargaining agreements under which employees were to receive a personal day as a bonus for "perfect attendance." The record also shows that after Local 668 engaged in a strike the County notified Local 668 that employees who had participated in the strike would not receive a perfect attendance bonus.

The dispositive question under section 1201(a)(3) is whether or not the County was motivated by a discriminatory intent when it notified Local 668 that employees who had participated in the strike would not receive a perfect attendance bonus.

A close review of the record does not show that the County was motivated by a discriminatory intent when it so notified Local 668. Notably, because the employees engaged in the strike, it may reasonably be argued that their attendance was not perfect under the terms of the applicable collective bargaining agreements. Moreover, the County's notification was consistent with section 1006 of the PERA, which provides that "[n]o public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike."

On a substantially similar record in Somerset Area School District, supra, the Board dismissed a charge alleging that an employer discriminated against employees by refusing to pay their health care benefits while they were on strike. Citing Woodland Hills Education Association PSEA/NEA v. Woodland Hills School District, 508 A.2d 365 (Pa. Cmwlth. 1986), the Board explained that the employer "was statutorily obligated under Section 1006 of PERA to cease all compensation, including health care benefits for the duration of the strike." 34 PPER at 270. The Board also noted that the record did not show that the employer's conduct was motivated by a discriminatory intent.

Application of the same reasoning to the facts of record leads to the same result. Accordingly, the charge as filed under section 1201(a)(1) must be dismissed.

The dispositive question under section 1201(a)(1) is whether or not the County's notification to Local 668 would have a tendency to coerce a reasonable employe in the exercise of their right to strike.

Given the contractual basis for the County's notification as well as the dictates of section 1006, it is apparent that under the totality of circumstances a reasonable employe would not have been coerced in the exercise of their right to strike. Indeed, as the Board further explained in Somerset Area School District, supra, "for the same reasons we have found the District's actions to be non-discriminatory, they likewise, under the circumstances, would not have any tendency to coerce employees." Id. at 271. Accordingly, the charge as filed under section 1201(a)(1) must be dismissed.

#### 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 PERA.

2. Local 668 is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The County has not committed unfair practices under sections 1201(a)(1) and 1201(a)(3) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, 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 eighteenth day of June 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

---

Donald A. Wallace, Hearing Examiner