COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION LOCAL 668 SERVICE EMPLOYEES INTERNATIONAL UNION	:	
v.	:	Case No. PERA-C-06-569-E
YORK COUNTY	:	

PROPOSED DECISION AND ORDER

On November 27, 2006, the Pennsylvania Social Services Union Local 668, Service Employees International Union (Union) filed a charge of unfair practices (Charge) with the Pennsylvania Labor Relations Board (Board) alleging that the County of York (County) violated Section 1201(a)(1) & (3) of the Public Employe Relations Act (PERA). On February 21, 2007, the Secretary of the Board issued a Complaint and Notice of Hearing directing that a hearing take place on Wednesday, April 11, 2007, in Harrisburg, PA. Pursuant to granted continuance requests, the hearing was not held until November 7, 2007. During the hearing, the parties were afforded a full and fair opportunity to present testimony and documents and cross-examine witnesses. Both parties filed post-hearing briefs.

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

FINDINGS OF FACT

1. The County is a public employer. (PERA-R-12,601-C, as amended).

2. The Union is an employe organization. (PERA-R-12,601-C, as amended).

3. April Billet-Barclay was the supervisor of the Specialized Services Unit and the Drug Treatment Court Unit of the York County Adult Probation Office. Michael Beckley was an adult parole officer employed in the Drug Treatment Court Unit. (N.T. 51, 84, 85).

4. On November 2, 2006, Billet-Barclay sent an e-mail to Union shop stewards William Lubold, Cindy A. Sweitzer and Kevin Titzell. That e-mail also copied Theresa Reichard and Albert Sabol. The e-mail gave the Union notice that Billet-Barclay was "investigating a matter that may involve a possible disciplinary action against Mr. Beckley." This e-mail indicated Billet-Barclay was to meet with Beckley at 10:00 a.m. on Monday, November 6. (N.T. 11, 42, 43; Joint Exhibit 3).

5. Because Billet-Barclay was not available to meet on Monday, November 6, with Beckley, she e-mailed the Union on that day, asking for an extension of time to conduct the meeting. This request was necessitated by a contractual provision that mandated the meeting take place within five days of notice to the Union.[1] The Union denied Billet-Barclay's extension request. In response to that denial, Billet-Barclay e-mailed the Union at 8:43 a.m. on Wednesday, November 8, "Based on what issue? I plan to proceed with this issue and if the union has questions then we can set up a meeting to discuss the issue with Bonnie Julius."[2] On that Wednesday morning, Billet-Barclay was still contemplating discipline for Beckley at the upcoming meeting. The Union advised Beckley not to speak with Billet-Barclay unless he had Union representation present. (N.T. 40, 44, 55, 94, 95; Joint Exhibit 3).

6. After sending the morning e-mail on Wednesday, November 8, but before meeting with Beckley, Billet-Barclay met with the deputy director, Theresa Reichart, to discuss

[1] In it's brief, the Union states that the applicable contractual reference is Article XIX, but that is not part of the record evidence in this case.
[2] In it's brief, the Union asserts that Julius is the District Court Administrator for the York County, but she is not identified as such on the record.

Beckley. Reichart and Billet-Barclay decided to take a more irenic tack and both agreed not to discipline Beckley. After that meeting, Billet-Barclay, at 9:10 a.m., e-mailed only Beckley the following:

> Hi Mike,
> I'd like to discuss this issue with you. I have Court at 9:30 and will seek you out afterwards. I will drop the disciplinary action, but you and I need to discuss the matter.
> Thanks
> April

(N.T. 96; Joint Exhibit 3).

7. Later, on Wednesday, November 8, Billet-Barclay called Beckley into her office. She informed Beckley that there would be no discipline, and told him they needed to schedule a future time to discuss the underlying incident. Beckley was adamant that he wanted a Union representative at that future meeting. Billet-Barclay was equally adamant that there was no need for Union representation at that future meeting, since there was no discipline which would arise from that future meeting. When Beckley continued with his demand, Billet-Barclay told him he could be disciplined if he refused to schedule the future meeting with her. The meeting ended with Billet-Barclay telling Beckley to "take some time to think about it. . . ." Beckley was never disciplined. (N.T. 69, 70-72, 75-77, 79; Joint Exhibit 2).

DISCUSSION

In it's charge, the Union asserts that the County violated Section 1201(a)(1) and (3) of the PERA by "threatening to discipline him [Beckley] if he exercised his right to union representation. . . ."
More specifically, the Union charges the County with violating Beckley's rights as set forth in NLRB v. J. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975); adopted by the Board in Conneaut School District, 12 PPER ¶ 12155 (Final Order, 1981). Because the Union has fallen short of proving the elements necessary to sustain a violation of the PERA, this charge is dismissed.

The Board will find an employer in violation of Section 1201(a)(1) of the PERA if it denies an employe's request for union representation at an investigatory interview with the employer, which the employe reasonably believes will result in the imposition of discipline. Conneaut School District, *supra*, *citing* NLRB v. J. Weingarten, Inc., *supra*.

For any meeting to fall under the rubric of investigatory interview, "the meeting must have been calculated to form the basis for taking disciplinary or other job[-]affecting actions against [the employe in question] because of past misconduct." Sayre Area Education Association v. Sayre Area School District, 36 PPER 54 at 153 (Final Order, 2005).

The evidence elicited at hearing reveals that Billet-Barclay, a supervisor, outside the bargaining unit, informed the Union in an e-mail that she was conducting an investigation that might result in the discipline of Beckley, a bargaining unit member, and that she planned to meet with Beckley. Realizing that the parties' contract required her to meet with Beckley within five days of her notice to the Union, and realizing that the scheduled meeting was outside that limit, Billet-Barclay asked the Union for an extension of time.

The Union refused her request. Billet-Barclay then e-mailed the Union on November 8, at 8:43 a.m. that she would ignore the contract limitation, have the meeting outside the five-day limit, and "if the Union has questions", an after-the-fact meeting could be set up with a woman named, Bonnie Julius.[3] Beckley was copied on this e-mail. (Joint Exhibit 3).

[3] Nevertheless, at the hearing, Billet-Barclay testified it was *she* who wanted the meeting with Julius to discuss the Union's refusal to give her an extension of the five-day contractual limitation. Clearly, the e-mail contemplates that if the Union is dissatisfied with Billet-Barclay's decision to go ahead, despite the five-day limitation, the *Union* could ask for a meeting with Julius. (N.T. 94).

It is no wonder, given what the Union considered Billet-Barclay's cavalier attitude toward the parties' bargained-for contract, that the Union was adamant that Beckley not speak with Billet-Barclay unless a Union representative was present.

Later in the morning of November 8, Billet-Barclay met with the deputy director. After meeting with the deputy director, Billet-Barclay was no longer considering discipline for Beckley. Instead of e-mailing the Union of her changed attitude, she, for the first time, e-mailed only Beckley at 9:10 a.m. that morning:

> Hi Mike,
> I'd like to discuss this issue with you. I have Court at 9:30 and will seek you out afterwards. I will drop the disciplinary action, but you and I need to discuss the matter.
> Thanks
> April

(Joint Exhibit 3; N.T. 47). By not including the Union in this last e-mail, Billet-Barclay, either by oversight or intention, never informed the Union of the meeting she was scheduling with Beckley, and never revealed to the Union that, after meeting with her supervisor, she was no longer considering discipline for Beckley.

Billet-Barclay's rendition of what occurred at the November 8 meeting is materially different than Beckley's. Billet-Barclay insists she wanted merely to schedule a future meeting to discuss the past actions by Beckley, and that she assured Beckley that no discipline would result from that meeting. Upon Beckley's continued demand for Union representation at the future meeting, where no discipline would result, Billet-Barclay told Beckley that he would be disciplined if he refused to schedule that meeting.[4]

Beckley asserts that he wanted a Union representative at the future meeting, and that Billet-Barclay threatened to proceed with the *original* discipline if Beckley continued to press for Union representation at the future meeting.

While both were quick to testify about what they *meant*, neither Beckley, nor Billet-Barclay articulated with much clarity exactly what each *said* at the November 8 meeting. However, Billet-Barclay was more precise in her testimony than was Beckley, whose viva voce statements seemed occasionally at odds with his written statements. What both do agree on, however, is that Billet-Barclay told Beckley at the meeting's conclusion that he should "take some time and think about it. . . ." (N.T. 100). Or, as Beckley wrote in his statement, "We left the conversation with me able to think about having the meeting in the near future." (Joint Exhibit 2).

I need not resolve the evidentiary discrepancies in the testimony about what was said at the November 8 meeting, since that meeting was not an investigatory interview. No matter who's rendition of the meeting is accurate, it is beyond peradventure that this was not a meeting designed to "form the basis for taking disciplinary or other job[-]affecting actions against [the employe in question] because of past misconduct." Sayre Area Education Association v. Sayre Area School District, 36 PPER at 153.

Since there was no investigatory meeting, there can be no Weingarten, *supra*, violation. Therefore, this charge is dismissed.

CONCLUSION

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 within the meaning of Section 301(1) of the PERA.

[4] "It is within the [employer's] managerial prerogative, however, to bar Union representatives from meetings not involving rights that arise out of Article IV of [the] PERA. Furthermore, the [employer] may exercise its managerial prerogative to discipline employes that refuse to abide by its direction of personnel." Sayre Area Education Association v. Sayre Area School District, 36 PPER at 153.

2. The Union is an employe organization within the meaning of Section 301(3) of the PERA.

3. The Board has jurisdiction over the parties.

4. The County has not committed unfair practices within the meaning of Section 1201(a)(1), and (3) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of March, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, HEARING EXAMINER