

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :
OFFICERS ASSOCIATION :
 :
v. : Case No. PERA-C-08-403-E
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF CORRECTIONS :
FAYETTE SCI :

PROPOSED DECISION AND ORDER

On October 16, 2008, the Pennsylvania State Corrections Officers Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleges that, on September 10, 2008, the Commonwealth of Pennsylvania, Department of Corrections (Commonwealth), Fayette State Correctional Institution (Fayette SCI), violated Section 1201(a)(1) of the Public Employee Relations Act (PERA). The Union specifically alleges that the Commonwealth engaged in unfair practices when management summoned the Union business agent to the Union bulletin board (board), questioned him about a posting and ordered him to remove the posting from the board. The Union also alleges that implied threats made during this exchange also violate Section 1201(a) (1) of PERA.

On November 26, 2008, the Secretary of the Board issued a complaint and notice of hearing (CNH) directing that a hearing take place on Friday, February 20, 2009 in Harrisburg, Pennsylvania. On January 22, 2009, the Secretary issued an amended CNH in response to Union Counsel's January 8, 2009 letter indicating that the Union mistakenly referred to Somerset SCI in its specification of charges instead of Fayette SCI. In the amended CNH, the Secretary amended the caption, changing Somerset to Fayette. The assigned hearing date and location remained the same. Also, the parties stipulated and agreed at the hearing that the correct institution is Fayette SCI. (N.T. 5). During the February 20, 2009 hearing, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-01-153-E, Order and Notice of Election).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-01-153-E, Order and Notice of Election).
3. There is one Union bulletin board (board) at Fayette SCI. The placard above the board identifies it as belonging to the Union. Only Union materials are posted on this bulletin board. (N.T. 8, 14-15).
4. Sergeant Christian Sheetz is the local Union secretary. He is responsible for managing and postings on the board. (N.T. 8-9, 14).
5. The board is enclosed in a glass case with a lock, and Sergeant Sheetz has a key. (N.T. 9).
6. On September 10, 2008, a board posting printed on pink letter-sized paper stated the following:

ATTENTION ALL PSCOA

MEMBERS

PLEASE DO NOT FORGET

TO SIGN THE
PETITION ! ! !
THIS IS VERY
IMPORTANT TO THE
2-10-SHIFT

(N.T. 8-9, 35; Union Exhibit 1).

7. The parties' collective bargaining agreement (CBA) provides, in relevant part, as follows:

ARTICLE 31
ASSOCIATION BUSINESS

Section 1. The employer agrees to provide space on bulletin boards to the Association for the announcement of meetings, election of officers of the Association and any other material related to the Association business. Furthermore, the Association shall not post material detrimental to the labor-management relationship nor of a political or controversial nature. The Association may send mail related to Association business to local official Association representatives at appropriate facilities to which mail is delivered. Such mail shall not be read by other than addressee.

(N.T. 40; Employer Exhibit 1, Article 31, Section 1 at 58).

8. Captain Nose is the shift commander for the second shift which is the 2 p.m.-10 p.m. shift. Lieutenant Vojacek alerted Captain Nose to the posting. (N.T. 21-22, 26, 60-61).

9. Captain Nose heard rumors that the "PETITION" referred to in the posting was a petition to remove Nose as shift commander on the second shift. (N.T. 23-24, 27, 35).

10. On September 10, 2008, Lieutenant Ross was Sheetz's immediate supervisor. Nose ordered Ross and Lieutenant Blakey to look at the board and meet with Sheetz about the meaning of the posting. (N.T. 8-11, 24-25, 36-37, 60-61).

11. At the board, Sheetz met with Ross, Blakey and Vojacek. Ross and Blakey questioned Sheetz about the meaning of the posting. Specifically, Blakey asked Sheetz to explain the term "PETITION". (N.T. 8-11, 24-25, 28-29, 36-38, 60-61).

13. Sheetz responded that it was Union business and that it was none of management's business. Sheetz also told Ross and Blakey that he did not post the sign, but in fact he did. (N.T. 11-12, 17, 36-38, 55, 58-59).

14. Ross told Sheetz that petitions are not permitted in the jail. Blakey asked Sheetz if he had a key for the board. Sheetz responded in the affirmative but that he did not have it with him. Ross then twice ordered Sheetz to remove the posting from the board. Sheetz refused and told Ross that he had no authority to dictate to the Union what materials can be posted. (N.T. 12, 33-34, 38, 41, 54-57, 59).

15. Sheetz asked Blakey if the discussion was finished and, after Blakey said yes, Sheetz left. The posting was removed several days later. (N.T. 13, 33-35, 41).

16. Nose did not perceive the posting to be offensive on its face. He was seeking clarification of the meaning of the posting in light of rumors he had heard. Nose did not learn of the true meaning of the posting until the hearing in this case. Sheetz was not disciplined as a result of the incident. (N.T. 25, 29, 32-34, 15).

17. The petition sought employe support for a charitable cause to allow the Union to use the employes' picnic fund money for someone who needed medical attention. Sheetz did not inform management of this fact during management's investigation of the posting on September 10, 2008. (N.T. 15, 34, 41).

18. The position of Nose and the Fayette Superintendent was that the posting could stay if it pertained to Union matters, if not the Union was to remove it. (N.T. 23, 28, 34).

19. Ross was familiar with the language in Article 31 of the CBA and he was questioning Sheetz pursuant to that Article. (N.T. 40, 44, 54).

DISCUSSION

In its charge, the Union alleges that Ross's and Blakey's questioning of Sheetz about the posting, Ross's order to remove the posting and implied threats made during the discussion at the board on September 10, 2008, constitute interference with--as well as intimidation, coercion and restraint of--Sheetz's Article IV rights thereby constituting an independent violation of Section 1201(a) (1) of PERA.¹ (Specification of Charges, ¶ 6).

An independent violation of Section 1201(a) (1) occurs, "where in light of the totality of the circumstances, the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001); Northwest Area Educ. Ass'n v. Northwest Area Sch. Dist., 38 PPER 147 (Final Order, 2007). Under this standard, the complainant does not have a burden to show improper motive or that any employes have in fact been coerced. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order, 2004). "If the complainant carries its burden of establishing a prima facie case of a Section 1201(a)(1) violation, the burden shifts to the respondent to establish a legitimate reason for the action it took and that the need for such action justified any interference with the employes' exercise of their statutory rights. Philadelphia Community College, 20 PPER ¶ 20194 (Proposed Decision and Order, 1989)." Bethel Park Custodial/Maintenance Educational Personnel Association v. Bethel Park Sch. Dist., 27 PPER ¶ 27033 (Proposed Decision and Order, 1995). In Ringgold Educ. Ass'n v. Ringgold Sch. Dist., 26 PPER 26155 (Final Order, 1995), the Board countenanced this analysis and held that an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Id. at 360.

As a general matter, employers and courts may not interfere with the right of an association to select, establish, govern and effectuate its internal affairs. PLRB v. Eastern Lancaster County Educ. Ass'n., 427 A.2d 305 (Pa. Cmwlth. 1981). Under the parties' CBA in this case, the Commonwealth agreed to provide the Union with space on bulletin boards for the "announcement of meetings, election of officers of the [Union] and any other material related to [Union] business." (F.F. 7; Employer Exhibit 1, Article 31, Section 1). However, the language that permits the Union to post "any other material related to [Union] business," is limited by the same Section of the CBA which provides that "the [Union] shall not post material detrimental to the labor-management relationship nor of a political or controversial nature." (F.F. 7; Employer Exhibit 1, Article 31, Section 1). This limiting provision permits the Commonwealth to review postings and direct the Union to remove them if they are "detrimental to the labor-management relationship [or] of a political or controversial nature." Id. Although the question of what materials satisfy this contractual language are more properly presented for arbitration, this language clearly gives the Commonwealth the right to investigate a posting that, on its face, may have an affect on labor-management relations or may be of a political or controversial nature.

¹ I am dismissing the allegations contained in paragraph number 3 of the Specification of Charges as unsupported by the record. There is a conflict in the testimony between Sheetz and Ross on whether Ross stated, "[f]lck the PSCOA, they are nothing but a bunch of assholes and they are a piece of shit," as quoted in paragraph 3 of the specification of charges. I have resolved this conflict in favor of Ross and find that Ross did not make the statement. (N.T. 46, 52-53).

The record shows that the term "PETITION" as used in the posting at issue was facially innocuous but may have arguably referred to political or controversial activities. In addition, rumors that the posting referred to a petition to remove Captain Nose as commander of the second shift reasonably supplied Nose with the motivation to investigate further whether the posting impacted labor-management relations. Here, the Commonwealth possessed a contractual right to investigate the meaning of the posting, which is inherent in the contractual language forbidding certain types of postings. Although the rank and file employees in the bargaining unit on the second shift may have understood the posting, it was facially unclear and the term "PETITION" justifiably triggered the contractual right of management to investigate the posting to determine whether it would undermine the operation of the institution under the criteria set forth in Article 31, Section 1 of the CBA.

It follows that, if the Commonwealth has a right to investigate, then the Union leadership has a concomitant obligation to cooperate with those investigations so the Commonwealth can understand the nature of the posting. Such a cooperative relationship is necessary to effectuate the provisions of Article 31, Section 1 of the CBA. Sergeant Sheetz withheld information from management officials seeking to investigate the posting. This left management with no real understanding of the posting other than the negative labor-management effects established by rumors. Sergeant Sheetz as the Union business agent failed to meet his obligation under the CBA to work with management in investigating the posting. Left with the understanding that the posting sought support to remove Captain Nose from his command of the second shift, management reasonably acted pursuant to the CBA to order the Union to remove the posting as undermining labor-management relations and the operation of the institution. Of course, all this could have been avoided if Sheetz simply cooperated and revealed the fact that the petition referenced in the posting sought employee support for a charitable cause that would have required employees to give their annual picnic fund money to someone who needed medical attention. (F.F. 17). In fact, both the Fayette Superintendent and Captain Nose both were of the position that if the posting related to Union business, the posting could stay. Certainly, management had a right to inquire under Article 31.

Here, the Union met its burden of establishing that, under the totality of the circumstances, the Commonwealth's actions (of confronting Sheetz with three Lieutenants at the board and ordering the removal of the posting) would have a tendency to coerce a reasonable employee in the exercise of his right to post union materials. However, the Commonwealth also established that it had a legitimate business reason, in light of the prison environment, the rumors and the CBA, to investigate the meaning of the posting. Furthermore, given Sheetz's failure to cooperate with management's investigation, which left management with an understanding that the posting sought to remove Captain Nose, the Commonwealth legitimately and reasonably ordered the removal of the posting. Therefore, on balance, I find in favor of the Commonwealth. Although an arbitrator is better suited to determine which postings satisfy the contractual criteria, as a practical matter, the Commonwealth must exercise its contractual rights to have postings removed in the short term based on its own determination that a posting undermines the operation of the institution by affecting labor-management relations, or other political or controversial matters. Certainly, the Commonwealth is not going to wait for an arbitrator's decision before it orders the removal of a posting that is arguably controversial or detrimental to the management operations of a prison.

CONCLUSIONS

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

1. The Commonwealth of Pennsylvania, Department of Corrections, Fayette SCI is a public employer under PERA.
2. The Pennsylvania State Corrections Officers Association is an employee organization under PERA.
3. The Board has jurisdiction over the parties hereto.

4. The Commonwealth has not committed unfair practices within the meaning of Section 1201(a) (1).

ORDER

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

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is 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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifteenth day of June, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner