

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED AUTO WORKERS LOCAL 1612 :
 :
 v. : Case No. PERA-C-08-159-E
 :
 LOWER BUCKS COUNTY JOINT MUNICIPAL :
 AUTHORITY :

PROPOSED DECISION AND ORDER

On May 5, 2008, the United Auto Workers Local 1612 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Lower Bucks County Joint Municipal Authority (Authority) alleging that the Authority violated Section 1201(a)(1) and (2) of the Public Employe Relations Act (PERA).

On June 4, 2008, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was scheduled for hearing on July 18, 2008, in Doylestown, Pennsylvania. After a series of continuance requests were granted, the hearing was scheduled, and took place, on February 10, 2009, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

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

FINDINGS OF FACT

1. The Authority is a public employer.
2. The Union is an employe organization.

3. Leonard Rodak has worked for the Authority twenty-nine years, and has held the position of chief mechanic/process chief since 2005. As such, he is in charge of the operations of the waste water treatment plant. He has also been the Union Chairman for the last four years. Ed Czyzyk is a member of the Authority's Board of Directors. (N.T. 6-8, 14).

4. In late 2006 another employe, Eric Kline was terminated. Rodak represented Kline in the termination proceedings. Despite Rodak's representation, Kline's dismissal was ultimately upheld. As a result of that termination, Czyzyk's relationship with Rodak changed for the worse. After the Kline dismissal, Czyzyk questioned Rodak's overtime and tried to diminish Rodak's job responsibilities. (N.T. 9, 10, 12-14, 16-18).

5. In December of 2007, there was a Union election in which Rodak ran against Czyzyk's brother-in-law. Rodak won that election. Czyzyk's criticism of Rodak continued after the election. This included accusing Rodak of having alcohol on the Authority's premises on the day the Union election was held. (N.T. 19-21, 58-63, 66).

DISCUSSION

The Union charges the Authority with violating Section 1201(a)(1) and (2) of PERA because the Authority's "Secretary, Edward Czyzyk...has interfered with the administration of the [Union] by undertaking and continuing to pursue an investigation of an internal union election for Union Shop Chairperson...." The Union also alleges that "Czyzyk has harassed the current Union Shop Chairperson...all because Czyzyk's son did not prevail in the internal union election."¹ The facts, as presented by the Union, support neither a violation of Section 1201(a)(1) or 1201(a)(2). A review of the law as applied to the facts shows why this charge fails.

First, we will examine what constitutes a violation of Section 1201(a)(1) of PERA, and why the Union's proofs fail. Then, we will do the same for Section 1201(a)(2).

¹ This was amended at the hearing to be Czyzyk's brother-in-law. (N.T. 4).

The Board will find an independent violation of Section 1201(a)(1) when the employer's actions, in view of the circumstances in which they occur, would tend to coerce employees in the exercise of their protected rights. The employer's action need not be improperly motivated, and the test for employee coercion is objective not subjective. Millcreek Township, 31 PPER ¶ 31056 (Final Order, 2000); SEPTA, 28 PPER ¶ 28025 (Final Order, 1996). "[P]urity of heart is no defense to a charge under Section 1201(a)(1) of the [PERA]." Eastern State School and Hospital, 14 PPER ¶ 14153 at 331 (Proposed Decision and Order, 1983).

The Union proved in its case in chief that Rodak's relationship with Czyzyk changed for the worse in 2006. In 2006, Rodak, as the Union Steward, represented an employee named Kline in dismissal proceedings. Despite Rodak's representation, Kline was ultimately dismissed. After Kline's dismissal, in 2006, Czyzyk started raising questions about Rodak's job performance, the overtime he accumulated and his job responsibilities. Czyzyk wanted Rodak's overtime stopped. Czyzyk also threatened to materially lessen Rodak's job responsibilities.

The Union election, which this charge alleges to be the genesis of the violation, took place in late 2007. But, Czyzyk was already critical of Rodak from the year before the election took place. The fact that Czyzyk's negative opinion of, and attempted adverse actions toward Rodak were initiated the year before, militates against a finding that Czyzyk's actions would cause reasonable employees to see the Union election as the basis for those actions. The Union's own proofs undermine this portion of the charge. See Rostraver Township Police Wage and Policy Committee v. Rostraver Township, 39 PPER 165 (Proposed Decision and Order, 2008)(prior event that causes animosity militates against later protected activity as the cause of adverse action).

The Board will find a violation of Section 1201(a)(2) where an employer creates a "company union" whose independence is subject to question because of managerial assistance to or involvement in it. Berks County Intermediate Unit, 29 PPER ¶ 29098 (Proposed Decision and Order, 1998); Montgomery County Intermediate Unit, 17 PPER ¶ 17124 (Final Order, 1986). The Union has offered no such proofs here.

CONCLUSION

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

1. The Authority is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Authority has not committed unfair practices within the meaning of Section 1201(a)(1) and (2) 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 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 fourth day of August, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, HEARING EXAMINER