

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARION SUNDERMAN :
 :
 v. : Case No. PERA-C-09-362-E
 :
 FREELAND BOROUGH :

PROPOSED DECISION AND ORDER

On September 9, 2009, Marion Sunderman (Complainant or Sunderman) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Freeland Borough (Respondent or Borough) alleging that the Borough violated Sections 1201(a)(1) and (3) of the Public Employe Relations Act (PERA).

On October 6, 2009, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and December 11, 2009, in Harrisburg was scheduled as the time and place of hearing if necessary.

A hearing was necessary and was held as scheduled at which times 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. Marion Sunderman is a public employe within the meaning of Section 301(2) of the Public Employe Relations Act, 43 P.S. § 1101.101, et. seq. (Act or PERA). (N.T. 4)

2. Freeland Borough is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4)

3. The Teamsters Union Local 401 (Union) is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)

4. That on February 19, 1991, the Board, at Case. No. PERA-R-90-704-E, certified the Union as the exclusive representative of a unit of all full-time and regular part-time blue collar nonprofessional employes including but not limited to operators; and excluding management level employes, supervisors, first level supervisors, confidential employes, and guards as defined in the Act. (N.T. 5-6, Board Exhibit 1)

5. That Ms. Sunderman, at all times relevant to this proceeding, held white collar positions that were not included in the blue collar unit represented by the Teamsters. (N.T. 5, Board Exhibit 1)

6. That in 1991, when the Teamsters petitioned to represent the Borough's employes, Ms. Sunderman was the Borough secretary/treasurer. At that time, she chose not to seek to be represented by the Teamsters and the Teamsters did not seek to represent her. Accordingly, the unit that the Teamsters sought to represent was a unit of blue collar employes. (N.T. 7, 20)

7. That on May 13, 2009, Ms. Sunderman wrote to Teamsters Local 401 to be included in the bargaining unit. (N.T. 11, Complainant Exhibit 1)

8. That the Teamsters never filed a petition for unit clarification to include Ms. Sunderman's position in the unit. (N.T. 13-14)

9. That on June 13, 2009, the Borough notified Ms. Sunderman that she was laid off from her position due to a restructuring. (N.T. 15, 28, 33)

10. That in July, the Borough and Teamsters signed a new collective bargaining agreement. (N.T. 21)

11. That Ms. Sunderman's position at the time of her layoff was assistant secretary/assistant treasurer. She held that position for approximately one month. Prior to that time, she was the Borough secretary/treasurer for nearly 21 years. (N.T. 15, Complainant Exhibit 2)

DISCUSSION

Marion Sunderman's charge of unfair practices alleges that Freeland Borough prevented her from joining the Teamsters Local 401. Ms. Sunderman contends that this action left her without the protection of a collective bargaining representative when the Borough terminated her from the position of assistant secretary/assistant treasurer. She contends that the Borough's decision to prevent her from joining the Teamsters was "one of the bargaining chips" used in negotiating a collective bargaining agreement with the Teamsters. Ms. Sunderman contends that these actions violated Section 1201(a)(3) of PERA, which prohibits employers from discriminating against employees to encourage or discourage membership in an employe organization.

To support a claim of discrimination, the charging party must establish that the employe engaged in an activity protected by the PERA; that the employer was aware of that activity; and that the employer took adverse action against the employe because of anti-union reasons. St. Joseph's Hospital v. Pennsylvania Labor Relations Board, 473 Pa. 101, 373 A.2d 1069 (1977).

There is no dispute about the first two elements. Ms. Sunderman engaged in protected activity. She did write a letter to the Teamsters requesting membership. The Borough Council knew of her interest in joining the Teamsters. Ms. Sunderman testified that she informed the Borough Council that she wanted to become a member of the Teamsters.

The dispute in this case is over the third element, whether the Borough was motivated by anti-union animus in preventing Ms. Sunderman from joining the Teamsters and in then deciding to eliminate her position. Motive creates the offense under Section 1201(a)(3) of PERA. PLRB v. Stairways, Inc. 425 A.2d 1172, 1175 (Pa. Cmwlth. 1981), quoting PLRB v. Ficon, 434 Pa. 383, 388, 254 A. 2d 3, 5 (1969).

In order for Ms. Sunderman's position to be represented by the Teamsters would require a unit clarification petition to be filed by either the Teamsters or the Borough. However, no petition was ever filed. Ms. Sunderman alleges that the reason a petition was never filed was to use her position as a "bargaining chip" in negotiations. Ms. Sunderman contends that the Borough's stated reason for terminating her position after twenty years employment, an efficiency reorganization, was a pretext.

The Complainant presented no direct evidence to prove this assertion. It is well-settled that the Board cannot rely upon suspicion or surmise in determining whether the complainant has produced a showing of anti-union animus. Lincoln University, 11 PPER ¶ 11046 (Nisi Decision and Order, 1980); Township of Upper Makefield, 10 PPER ¶ 10299 (Nisi Order of Dismissal, 1979). An inference of anti-union animus must be based on substantial evidence consisting of "more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311, 313 (Pa. Cmwlth. 1974).

Ms. Sunderman did testify that she sent a letter to the Teamsters requesting membership in the Union. The Teamsters never filed a petition for unit clarification. However, Ms. Sunderman called no one from the Teamsters or the Borough to be a witness in this proceeding to support her assertion that the Borough used the issue of her inclusion in the bargaining unit as a "bargaining chip" in negotiations.

The Borough's only witness was Borough Manager Lynn Ann Falatko. She testified that she moved from tax collector to borough manager on May 1, 2009. She testified that at no point in the Borough's recent negotiations with the Teamsters for renewal of the collective bargaining agreement for the blue collar unit did the parties use Ms. Sunderman's position as a bargaining chip.

Based on the testimony and documentary evidence presented, the decision that must be reached is that the Complainant has not sustained her burden of proving that the Borough acted in concert with the Teamsters to prevent Ms. Sunderman from becoming a member of the Teamsters or to persuade the Teamsters not to file a unit clarification petition to include Ms. Sunderman's position in the unit. Absent the proof of discriminatory motive, no violation of Section 1201(a)(3) of PERA will be found.

The complainant's charge also alleges that the Borough violated Section 1201(a)(1) of PERA, which prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of [PERA]." Under PERA, the right of employes to join an employe organization is guaranteed. However, there is no evidence to support the allegation that the Borough acted in a way to interfere with Ms. Sunderman's right to join the Teamsters. Accordingly, no violation of Section 1201(a)(1) will be found.

CONCLUSIONS

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

1. That Freeland Borough is a public employer within the meaning of Section 301(1) of PERA.
2. That Marion Sunderman is a public employe is an employe organization within the meaning of Section 301(2) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the Borough has not committed unfair practices in violation of Sections 1201(a)(1) and (3) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this twenty-fourth day of February, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner