

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

WILLIAM C. PLOUFFE, JR. :  
 :  
v. : Case No. PERA-C-09-459-E  
 : STATE SYSTEM OF HIGHER EDUCATION :  
KUTZTOWN UNIVERSITY :  
F. JAVIER CEVALLOS :  
SHARON PICUS :  
ANNE ZAYAITZ :

ORDER

On March 6, 2012, William C. Plouffe, Jr. (Complainant) filed with the Pennsylvania Labor Relations Board (Board) a Motion for Reconsideration of the Board's February 21, 2012 Order denying his Request to Reopen the Record for after-discovered evidence of an alleged "fraud on the Court". Under Section 95.98(g) of the Board Rules and Regulations, a request for reconsideration of a Board order must be filed with the Board within seven calendar days of the date of service of the Board order. 34 Pa. Code §95.98(g). The date of service of the Board order is the date the order is mailed by the Board, not the date of receipt. Temple University Hospital Nurses Association v. Temple University Hospital, 33 PPER ¶133162 (Order Denying Reconsideration, 2002). Thus, the last day for Mr. Plouffe to have filed a request for reconsideration of the Board's February 21, 2012 Order, was February 28, 2012. The alleged fact that Mr. Plouffe did not go to the post office to retrieve his mail until March 1, 2012, does not toll the running of the time for filing reconsideration.<sup>1</sup> Accordingly, Mr. Plouffe's March 6, 2012 Motion for Reconsideration is untimely and must be dismissed.

Even if the Motion for Reconsideration had been timely, there are no "extraordinary circumstances" warranting reconsideration of the Board's February 21, 2012 Order denying the Request to Reopen the Record. In the Motion for Reconsideration, Mr. Plouffe makes no cognizable argument to refute the Board's holding in the February 21, 2012 Order that as a result of Mr. Plouffe's decision to appeal the Board's July 20, 2010 Final Order in this matter to Commonwealth Court, the Board lacks jurisdiction to entertain the Request to Reopen the Record, or for that matter any further proceedings, that are not within the limited exceptions to the exclusive appellate jurisdiction under Pa. R.A.P. 1701.

Furthermore, although Mr. Plouffe couches his argument to reopen the record as "fraud on the Court", his claims are nothing but an assertion that Dean Anne Zayaitz's testimony that Mr. Plouffe did not request union representation should have been disbelieved by the Hearing Examiner, and Mr. Plouffe's testimony that he did request union representation, should have been found credible.<sup>2</sup> Regardless of phraseology, this is an attack on the credibility determinations, which is not a permissible basis upon which to reopen the record. Minersville Area School District v. Minersville Area School Service Personnel Association, 518 A.2d 874 (Pa. Cmwlth. 1986); Middletown Township Police Benevolent Association v. Middletown Township, 24 PPER ¶24167 (Final Order, 1993). Mr. Plouffe had the opportunity to prove to the Hearing Examiner that he requested union representation during the interview with Dean Zayaitz, and failed to sustain that burden. He is not entitled under the law to a second or third attempt to prove his case after issuance of a Final Order, filing of an appeal from that Final Order, and closing of the record.

After a review of the Motion for Reconsideration and all matters of Record, the motion is dismissed.

<sup>1</sup> The Board notes that United States Postal Service tracking records for the certified mailing of the February 21, 2012 Order reflects that notice of delivery was left for Mr. Plouffe on February 22, 2012.

<sup>2</sup> On March 2, 2012, Mr. Plouffe filed a Supplement to Petition to Re-Open Case Based on Fraud on the Court containing the purported results of a February 28, 2012 polygraph examination of Mr. Plouffe.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the Motion for reconsideration filed by William C. Plouffe, Jr. is hereby dismissed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this twentieth day of March, 2012. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.