

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DANIEL C. ANGELUCCI :
 :
v. : Case No. PERA-C-14-44-E
 :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA BOARD OF PROBATION AND :
PAROLE :

FINAL ORDER

Daniel C. Angelucci (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on January 21, 2015, challenging a Proposed Decision and Order (PDO) issued on December 30, 2014.¹ In the PDO, the Board's Hearing Examiner concluded that the Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole (Commonwealth or PBPP) did not violate Section 1201(a)(1), (2), (3), (4), (5), (6), (7), (8) or (9) of the Public Employe Relations Act (PERA) when it issued a Pre-Disciplinary Conference Notice regarding the Complainant's alleged falsification of leave slips. The Commonwealth filed a response to the exceptions on February 17, 2015.

The facts of this case are summarized as follows. The Complainant has been a parole agent with PBPP in Philadelphia for 12 years. On January 30, 2014, Catherine V. Goodman, the PBPP's Deputy Director, sent the Complainant a Written Notice of Pre-Disciplinary Conference, which provided, in pertinent part, as follows:

Dear Mr. Angelucci:

This is to advise you that an investigation is presently being conducted into the following allegation(s) concerning your conduct as an employee of this organization:

Falsification of Commonwealth Records:

Specifically, it is alleged that you entered false and/or otherwise inaccurate information on PBPP-145 forms (i.e. Agents Daily Record of Activities), pertaining to your leave status and Paid Office Closing (POC) eligibility, submitted for December 24, 26 and 28, 2012. This is a violation of Section B.12.b of the PBPP Code of Conduct.

This is to advise you that a Pre-Disciplinary Conference (PDC) has been scheduled for Wednesday, February 5, 2014 at 9:30 a.m. at the Eastern Regional Office, 2630 N. 13th St., suite 100, Philadelphia, Pa. The purpose of the conference is to present you with an opportunity to respond to the allegation. The nature of the evidence in support to (sic) the allegation will be described to you at that time. ... You will be notified, in writing, as soon a (sic) possible as to whether disciplinary action will be taken.

Discipline may or may not be imposed, depending on the facts gathered during the investigation. Should you not attend this PDC, decisions concerning appropriate action that may be warranted will be made based upon the available information.

¹ The twentieth day following issuance of the Hearing Examiner's proposed decision was January 19, 2015. However, January 19 (Dr. Martin Luther King, Jr. Day) is a legal holiday under the laws of the Commonwealth, 44 P.S. § 11, and is therefore excluded from computation of the twenty-day period for filing of exceptions. 34 Pa. Code § 95.100(b). Further, the Capitol Complex, including the Board's Harrisburg office, was closed on January 20, 2015 for the inauguration of Governor Wolf. As such, the Complainant's exceptions were timely filed on January 21, 2015.

If you have questions concerning this matter, please contact the Labor Relations Division...

The Complainant subsequently attended the pre-disciplinary conference in February, 2014 and, as a result, was suspended for one day on March 19, 2014. The notice of suspension indicated that his response to the allegation was not acceptable.

The Complainant filed his Charge of Unfair Practices on February 7, 2014, alleging that the Commonwealth had violated Section 1201(a)(1), (2), (3), (4), (5), (6), (7), (8) and (9) of PERA when it issued him a Pre-Disciplinary Conference Notice in retaliation for engaging in protected activity. On February 27, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing, directing that a hearing be held before the Hearing Examiner on June 16, 2014. The hearing was held as scheduled. The Complainant was not represented by counsel at the hearing.

At the commencement of the hearing, the Complainant requested a continuance because several of the witnesses for whom he obtained subpoenas were not present. The Commonwealth objected to any continuance on the basis that the witnesses who were allegedly under subpoena had not been properly served. The Hearing Examiner deferred any ruling on the issue of service of the subpoenas and requested that the parties file briefs in support of their respective positions. The parties were then afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs regarding the Complainant's continuance request. The Hearing Examiner granted the Complainant leave to file an additional response to the Commonwealth's Motion to Dismiss that had been included with its post-hearing brief. The Complainant's response was subsequently filed on September 22, 2014. On October 6, 2014, the Complainant filed a supplemental brief in support of his position.

In the PDO, the Hearing Examiner concluded that the Commonwealth did not violate Section 1201(a)(1) and (3) of PERA because the Complainant failed to present any evidence that he had engaged in protected activity prior to issuance of the Pre-Disciplinary Conference Notice. The Hearing Examiner further determined that the Complainant failed to present sufficient evidence that the Commonwealth violated Section 1201(a)(2), (4), (6), (7), (8) or (9) of PERA. Additionally, the Hearing Examiner indicated that the Complainant lacked standing to allege a violation of the Commonwealth's duty to bargain under Section 1201(a)(5) of PERA. Accordingly, the Hearing Examiner denied the Complainant's continuance request and dismissed his Charge.

Initially, the Complainant does not challenge any of the Hearing Examiner's Findings of Fact in his exceptions. Therefore, the Hearing Examiner's findings are conclusive. **FOP Lodge #5 v. City of Philadelphia**, 34 PPER 22 n.3 (Final Order, 2003).

The Complainant alleges in his exceptions that the Hearing Examiner's decision should be reversed because the Board did not enforce the subpoenas issued to him, thereby preventing him from presenting witness testimony. In **International Union Security Police and Fire Professionals of America v. United Government Security Officers of America**, 35 PPER 53 (Final Order, 2004), the Board set forth the standard regarding the enforceability of administrative subpoenas, stating as follows:

In *PHRC v. Lansdowne Swim Club*, 515 Pa. 1, 526 A.2d 758 (1987), our Supreme Court stated that a party must satisfy the following three-part conjunctive standard to demonstrate the enforceability of an administrative subpoena: (1) the inquiry is within the authority of the agency, (2) the demand is not too indefinite; and (3) the information sought is reasonably relevant. See also, *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 519 A.2d 408 (1986). In *York v. Public Utility Comm'n*, 281 A.2d 261 (Pa. Cmwlth. 1971), the Commonwealth Court affirmed the Commission's denial of subpoenas duces tecum requesting a mass of

papers to be supplied for the purpose of gathering evidence. Quoting from Supreme Court, the York Court stated that "[a]nything in the nature of a mere fishing expedition is not to be encouraged." *Id.* at 278 (quoting *American Car & Foundry Co. v. Alexandria Water Co.*, 221 Pa. 529, 535, 70 A. 867, 869 (1908)).

35 PPER at 166.

The Complainant alleged in his Charge that the Commonwealth issued the Pre-Disciplinary Conference Notice in retaliation for his engaging in protected activity. However, the Hearing Examiner concluded that the Complainant failed to present any evidence that he engaged in protected activity prior to the issuance of the Pre-Disciplinary Conference Notice. Further, the Complainant failed to demonstrate in his offer of proof at the hearing (N.T. 158-163) or in his exceptions that the testimony of the other witnesses he wished to present is in any way relevant to proving that he engaged in protected activity. **United Government Security Officers of America, supra.** Absent proof of his protected activity, it is impossible for the Complainant to carry his burden to prove that the Commonwealth violated Section 1201(a)(3) of PERA. Accordingly, the Hearing Examiner did not err in denying the Complainant's continuance request and properly concluded that the Commonwealth did not violate Section 1201(a)(1), (2), (3), (4), (5), (6), (7), (8) or (9) of PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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 exceptions filed by Daniel C. Angelucci are hereby dismissed, and the December 30, 2014 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twenty-first day of April, 2015. 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.