

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CARMELA CAPELLUPO-BEAVER AND :
FEDERATION OF READING AREA :
COMMUNITY COLLEGE LOCAL 3173 :
 : Case No. PERA-C-10-222-E
v. :
 :
READING AREA COMMUNITY COLLEGE :

PROPOSED DECISION AND ORDER

On June 25, 2010, Carmela Capellupo-Beaver (Capellupo-Beaver or Complainant) and the Federation of Reading Area Community College Local 3173 (Federation or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Reading Area Community College (College or Respondent) alleging that the College violated Sections 1201(a)(1) and (3) of the Public Employe Relations Act (PERA).

On July 19, 2010, the Secretary of the Board issued a Complaint and Notice of Hearing in which the case was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and September 28, 2010, in Reading was scheduled as the time and place of hearing if necessary.

A hearing was necessary but was continued to December 2, 2010 on the motion of the Respondent without objection from the Complainant. The hearing was continued again to February 16, 2011 on the motion of the Respondent due to the medical condition of a key witness, over the objection from the Complainant.

The hearing was held on the rescheduled date. A second day of hearing was held on April 18, 2011. The parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Complainants submitted a post-hearing brief on June 2, 2011 and the Respondent submitted a post-hearing brief on June 24, 2011.

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 Reading Area Community College is a public employer within the meaning of Section 301(1) of PERA.
2. The Federation of Reading Area Community College Local 3173 is an employe organization within the meaning of Section 301(3) of PERA.
3. The Federation is the exclusive representative of a unit of paraprofessional/coordinator staff at the College. (N.T. 9, Federation Exhibit 1)
4. The College and the Federation are parties to a collective bargaining agreement for the paraprofessional/coordinator unit that includes, inter alia, a grievance procedure at Article IV, Grievance and Arbitration. (N.T. 175, 194, College Exhibit 8)
5. Carmela Capellupo-Beaver is employed by the College as an Enrollment Services Coordinator and is a member of the paraprofessional/coordinator unit represented by the Federation. (N.T. 9, 155, 175, Federation Exhibit 1)

6. Capellupo-Beaver began working for the College in 2006 as an academic advisor. The College later assigned her the title of enrollment services coordinator, with duties that she believed were broader than that of academic advisor. (N.T. 9-10, Federation Exhibit 2)

7. The function of enrollment services coordinator is to assist students from the time before they apply for admission through their first semester. (N.T. 154)

8. The function of academic advisor is to assist students from their second semester to the end of their time at the College. (N.T. 154)

9. The two staffs are separate. However, it is the policy of the College's administration to have the two staffs work cooperatively and to participate in cross training. (N.T. 155, 172-175)

10. On March 30, 2010, Capellupo-Beaver filed a grievance over a "performance improvement plan" (PIP). The grievance was denied at the various steps in the grievance procedure, including the level of president on May 13, 2010, the last step before arbitration. (N.T. 59, College Exhibit 2)

11. As of the date of this hearing, the grievance is proceeding to arbitration. (N.T. 119)

12. On March 18, 2010, Diane Marabella, Senior Vice President for Enrollment Management and Student Development wrote the PIP that is being grieved by Capellupo-Beaver. (N.T. 35, 62, Federation Exhibit 6)

13. In April, 2010, Capellupo was supervised by Maria Mitchell, Associate Vice President for Enrollment Management and Student Development. Mitchell's supervisor was Marabella. (N.T. 14-15, 128, 153, 158)

14. At the end of April, 2010, Capellupo-Beaver's supervisor required that she, the other enrollment services staff members and the academic advisors attend meetings to train employees on academic advising. The meetings were on April 26 and 28. (N.T. 16, 298)

15. Mitchell testified that the training was to assist faculty advisors. Management decided to include Enrollment Services staff so that the training would be more collaborative in nature, and so that staff could hear what the training was about and extend and encourage some collaboration. (N.T. 127, 137-38)

16. The training was developed as part of the College's effort to improve the retention rates of students. The effort grew out of a College task force to study the low retention rates of students at the College. The task force concluded that more collaboration between enrollment services and academic advisor would assist students remain in the College and complete their studies. (N.T. 137-38)

17. Marabella was one of the presenters at the training at both days of the training. She also attended both days of training. She observed that Capellupo-Beaver was not engaged in the meeting as evidenced by her never smiling, never changing her somber expression, sometimes folding her arms, sitting back in her chair and not appearing engaged in the conversation. (N.T. 177-178, 185, 194, College Exhibit 9)

18. Diane Hollister is the division chair for the College's science and math department. She is a member of the faculty bargaining unit at the College. (N.T. 179, 298)

19. Hollister was also present at the April 26 and 28 training sessions. (N.T. 299-302)

20. Hollister observed that during the training sessions Capellupo-Beaver did not participate, ask questions and share. (N.T. 300-303)

21. Hollister was concerned about Capellupo-Beaver's behavior and reported her concern to Marabella. (N.T. 302)

22. Hollister is not a supervisor of Capellupo-Beaver. (N.T. 302)

23. Linda Bell is another division chair in the College and a member of the faculty bargaining unit. (N.T. 179)

24. Bell was present at the April 26 and 28 training sessions. (N.T. 179-180)

25. On April 29, 2010, at a Retention Task Force meeting, Bell told Marabella that she observed Capellupo-Beaver's behavior at the meetings as not showing interest in the training. (N.T. 179-180)

26. Maria Mitchell was also at both days of the training meeting. She also observed that Capellupo-Beaver was not participating, asking questions or sharing. (N.T. 137, 172)

27. Marabella, based on her own observations and comments from Hollister, Bell and Mitchell, decided she wanted to talk with Capellupo-Beaver about her behavior at the training sessions. On May 13, she sent this memo to Capellupo-Beaver:

I would really like for you and I to sit down
and talk about something-nothing disciplinary
at all-but something I need you to know about.

Please contact Kim to set up a time to meet
Thursday (preferably) or Monday.

(N.T. 31, 62, Federation Exhibit 5)

28. Marabella, in a May 19, 2010, memorandum to Capellupo-Beaver after the meeting, stated, "My intent for meeting with you, which I stated, was to share information about your perceived behavior at the academic advisor training sessions on Monday, April 26, 2010 and Wednesday, April 28, 2010." (N.T. 47, 62, Federation Exhibit 7)

29. At the meeting, Marabella told Capellupo-Beaver of the behavior that she and others observed of her being engaged in the training, not appearing to want to be there and not participating. Marabella told Capellupo-Beaver that she brought these observations to her attention for her professional growth and development and also to help her realize how important a collaborative spirit between staff and faculty was for the good of the College's work. Marabella recommended that Capellupo-Beaver carefully consider what was discussed in the meeting and see that her future behavior was consistent with this discussion. (N.T. 47, 62, 184-185, Federation Exhibit 7)

30. Marabella's May 19, 2010 memorandum also conveyed these observations and recommendations. (N.T. 47, 62, Federation Exhibit 7)

31. Capellupo-Beaver disagreed with Marabella's assertions. Also, on May 23, 2010 she documented her disagreements in a memo in response to Marabella's May 19 memo. (N.T. 185-189, Federation Exhibit 8)

32. The College took no adverse employment action against Capellupo-Beaver as a result of the May 13 meeting or the May 19 memo. (N.T. 189)

33. Marabella did not place the May 19 memorandum in Capellupo-Beaver's personnel file. (N.T. 189)

DISCUSSION

The Complainants, Carmela Capellupo-Beaver and the Federation of Reading Area Community College, allege that the Reading Area Community College committed unfair practices in violation of Sections 1201(a)(1) and (3) of the Public Employe Relations Act.

The complaint's focus is a May 13, 2010 meeting that Diane Marabella, Senior Vice President for Enrollment Services called Capellupo-Beaver to attend. The complainants contend that the meeting and a May 19, 2010 memorandum summarizing the meeting coerced Capellupo-Beaver in violation of Section 1201(a)(1) of PERA and discriminated against her in violation of Section 1201(a)(3) of PERA. The Complainants seek an order finding a violation of PERA, a cease and desist order and an order expunging and nullifying the May 19 memorandum.

Section 1201(a)(1) Allegation

Section 1201(a)(1) of PERA prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act." 43 P.S. 1101.1201(a)(1). An independent violation of Section 1201(a)(1) of PERA 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). Under this standard, the complainant does not have to show improper motive or that any employes have in fact been coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985); 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 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.

I cannot find that in light of the totality of the circumstances the employer's actions would have a tendency to coerce a reasonable employe in the exercise of protected rights.

The complainants argue that an objective observer would have to conclude that Marabella's calling Capellupo-Beaver to a meeting to discuss the employe's lack of engagement at a training meeting after she filed a grievance against Marabella, is an employer action that, to a reasonable employe, is coercive in nature.

However, several facts defeat that argument. First, Marabella called the meeting only after three other persons also critically observed Capellupo-Beaver's behavior. Two of the observers were faculty bargaining unit members; the third observer was Mitchell who corroborated what Marabella observed. Thus, the impetus for the meeting was not Marabella's unaided imagination. Second, the meeting was not disciplinary. Marabella made this clear to Capellupo-Beaver before the meeting. Also, following the meeting, the May 19 summary memorandum was not placed in Capellupo's personnel file to be used as a step of discipline. Third, following the meeting, Marabella gave Capellupo-Beaver the opportunity to respond in writing to the summary memorandum. Finally, as a matter of law, a public employer is permitted to meet with employes to discuss concerns about the performance of duties. This would be considered the "direction of personnel," part of the employer's "inherent managerial policy" under Section 702 of PERA, 43 P.S. 1101.702.

Section 1201(a)(3) Allegation

Section 1201(a)(3) of PERA prohibits "public employers, their agents or representatives from ... [D]iscriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization." 43 P.S. 1101.1201(a)(3). In order to sustain a charge of discrimination under Section 1201(a)(3) of PERA, the complainant must prove that the employe engaged in protected activity, that the employer was aware of that protected activity, and that but for the protected activity the adverse action would not have been taken against the employe. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). The complainant must establish these three elements by substantial and legally credible evidence. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974). St. Joseph's Hospital, *supra*.

The Union proved the first two elements of the St. Joseph's Hospital test. Capellupo-Beaver engaged in protected activity by filing a grievance on March 30, 2010. The employer was aware of her protected activity, as evidenced by its receipt of the grievance and its review by College administrators.

The issue in dispute in this case is whether the union has proven the third element of the St. Joseph's Hospital test, that the College was motivated by anti-union animus in taking adverse action against Capellupo-Beaver.

As a threshold matter, however, there is a question over whether the May 13, 2010 meeting and May 19 memorandum summarizing the meeting constituted adverse action as that term has been developed by the Board. The employer contends that an employer meeting with an employe to discuss a work issue is not adverse action where the meeting did not affect the employe's wages, did not result in a demotion or termination and did not effect her hours or terms and conditions of work. The employer also points out that the memo summarizing the meeting was not placed in Capellupo-Beaver's personnel file as a warning form of discipline.

An adverse action must have an adverse effect on the employe. In International B'hood of Painters and Allied Trades Local 1968 v. Girard School District, 41 PPER 103 (Final Order, 2010) the Board held that there no adverse action where the complained of action was a refusal to discipline the District Superintendent, something that had no adverse effect on the complainant.

It is clear from this record that the meeting did not have an adverse effect on Capellupo-Beaver as the Board has interpreted that term. As much as Capellupo-Beaver disliked having the meeting, it cannot serve as the basis for an actionable claim under PERA. Because there has been no showing of an adverse effect on Capellupo-Beaver, there can be no finding of an adverse action that would trigger an analysis of whether the adverse action was motivated by anti-union motivation, the third part of the St. Joseph's Hospital test for proving discrimination.

The Complainants' allegations that the College violated Section 1201(a)(3) by discriminating against Capellupo-Beaver for anti-union reasons must be dismissed.

CONCLUSIONS

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

1. That the Reading Area Community College is a public employer within the meaning of Section 301(1) of PERA.

2. That Carmela Capellupo-Beaver is a public employe within the meaning of Section 301(2) of PERA.

3. That the Federation of Reading Area Community College Local 3173 is an employe organization within the meaning of Section 301(3) of PERA.

4. That the Board has jurisdiction over the parties hereto.

5. That the Reading Area Community College 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 tenth day of November, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner