COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYES, DISTRICT COUNCIL 89	:	Case No. PERA-C-10-368-E
v.	:	
LANCASTER COUNTY	:	

PROPOSED DECISION AND ORDER

On October 7, 2010, the American Federation of State, County and Municipal Employes, District Council 87 (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Lancaster County (County or Respondent), alleging that the County violated Sections 1201(a)(1) and (3) of the Public Employe Relations Act (PERA).

On October 27, 2010, 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 20 and 21, 2010, in Harrisburg was scheduled as the time and place of hearing if necessary.

A hearing was necessary, but the hearing dates were moved to December 21 and 22, 2010. The hearing concluded on December 21.

At the hearing, the parties 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. Lancaster County is a public employer as defined in Section 301(1) of PERA. 43 P.S. § 1101.301(1). (N.T. 7, Board Exhibit 1)

2. AFSCME District Council 89 is an employe organization as defined in Section 301(3) of PERA, 43 P.S. § 1101.301(3). (N.T. 7, Board Exhibit 1)

3. The County operates a Youth Intervention Center (YIC) with a detention side for juveniles who have been adjudicated by the courts and a shelter side for other juveniles. (N.T. 11)

4. The adjudicated juvenile residents on the detention side have been placed there by the court for committing a variety of offenses, including theft, burglary, robbery, drugs, assault, aggravated assault and motor vehicle theft. (N.T. 31)

5. In the spring of 2010, AFSCME conducted an organizing drive to accrete into its existing prison guard unit the detention and security officer employes at the Youth Intervention Center (YIC). (N.T. 60)

6. On June 10, 2010, AFSCME filed a petition for representation with the Board, at PERA-R-10-270-E for this unit of employes. (N.T. 7, Board Exhibit 1)

7. Evette Sepulveda is a youth care worker at the YIC. She works on the shelter side on the third shift, 11 p.m. to 7 a.m. (N.T. 45)

8. At the beginning of her Sunday, June 20 shift Sepulveda complained to her supervisor, Christina Delgado, that someone was taking snacks from her open mailbox. (N.T. 145-146, County Exhibit 1)

9. The YIC has installed employe mailboxes along a wall outside the residential secured area. Each employe has an open mailbox with their name tag under their mailbox. (N.T. 20-21, 153; County Exhibits, 2, 8, 9, 13, 19 and 20)

10. The mailboxes are intended for mail. It is YIC policy to prohibit employes from placing personal items such as snacks in the mailboxes. However, YIC Director Drew Fredericks testified that no one has ever been disciplined for violating the policy. (N.T. 38-39)

11. Fredericks testified that he has heard of allegations of employes having had other personal items, including a cell phone, taken from the employe mailboxes, but because no written complaints were filed he never investigated the allegations. (N.T. 34-37)

12. Delgado asked Sepulveda when the taking occurred. Sepulveda said that was happening for the last month, but that the most recent time was "like Thursday [June 17] or Friday [June 18]." (N.T. 147)

13. Delgado asked Fred Arnold, the detention area supervisor on the third shift, to assist her in looking at a surveillance videotape of the area. The tape showed three employes taking something from Sepulveda's mailbox on Wednesday, June 16 and Thursday, June 17. Two of the employes were Adam Medina and Tommy Epps. and Latoya Boddy. (N.T. 173, 223, County Exhibit 17)

14. At the PLRB hearing on this charge, the County showed a copy of the videotape from those two days. The videotape shows these employes taking something from Sepulveda's mailbox. (N.T. 173, 223, County Exhibit 17)

15. Delgado then reported her videotape observations to Drew Fredericks, the YIC Director. On Monday, June 21, Fredericks called Sepulveda, and asked her if she had given permission to anyone to take snacks from her mailbox. Sepulveda said she had only gave permission to two other employes, Lavon Jackson and Damaris Veley. Fredericks directed her to write an unusual incident report of the incident. Sepulveda's report stated that she had been missing snacks "for a couple of weeks" and that she had only given permission to Jackson and Veley to take snacks from her open mailbox. (N.T. 19, 90, Union Exhibit 3)

16. Fredericks reviewed the videotape. Then he met with Medina and Epps. He showed them the videotape. Medina admitted that he had taken snacks out of the mailbox that he identified as belonging to Sepulveda. Epps admitted that he had taken snacks out of the mailbox that he believed belonged to another employe, Leroy Kirkland, who he believed had given him permission. (N.T. 37-38, 199)

17. On June 21, 2010, Fredericks asked Sepulveda, Medina, and Epps to write reports about the incidents on June 16 and 17. (N.T. 18, 23, 62, 155, 216.)

18. Medina wrote an "Unusual Incident Report" in which he admitted that he removed a snack size bag of chips from Sepulveda's mailbox on June 16. He also explained that Sepulveda had previously given him permission to take food items from her mailbox. (N.T. 27-28, 62-63, Union Exhibit 4)

19. Epps wrote an "Unusual Incident Report" in which he admitted that he took a snack bag of cookies from "Leroy G.'s" mailbox, referring to a co-worker named Leroy Kirkland, who he believed had given him permission to take snacks from his mailbox. (N.T. 25, 28-29, 69, 108 Union Exhibit 5)

20. At some time after Medina left Fredericks' office, Sepulveda filed a second Unusual Incident Report. The Report stated, in part,

> On Monday, June 21, 2010, at about maybe 2:00 pm, I received a call from my co-worker, Adam Medina. he asked me if I had said anything to my supervisor about missing food from my mailbox. I said, "Yes, why." Adam went on to tell me that he took chips from my mailbox and that he was sorry but he thought he could because of a conversation he said we had about 1 year ago. I told Adam I didn't remember but that he should have told me because I really wouldn't care if he wanted chips because I knew him and it wouldn't be a big deal. I told Adam this has been going on for a while, the missing food from my mailbox.
>
> ……

(N.T. 40, 90, Union Exhibit 6)

21. No one from the County spoke with Sepulveda about whether she specifically gave Medina permission to take snacks from her mailbox. (N.T. 157)

22. On June 23, Fredericks, issued notices to Medina, Epps and Latoya Boddy, a part-time employe, that he was recommending that they be terminated immediately for taking items from Sepulveda's mailbox. (N.T. 12-13, 44, 99, 169, Union Exhibits 1 and 2)

23. Fredericks' notice to Medina and Epps stated that the employes were dismissed after being seen in video footage removing items from another employe's mailbox. The notices state: "[T]he shear [sic] theft of another employee's personal property demonstrated this individual's total failure to achieve the basic expectations of a Youth Intervention Center and County employee." (N.T. 13, 14, 90, Union Exhibits 1 and 2)

24. Fredericks testified that the video showed that Medina took a snack size bag of chips, approximately six inches in size, and that Epps took a similarly size bag of cookies. (N.T. 27-29)

25. Among the duties of the youth care workers are to monitor and ensure safety and security in the housing units. (N.T. 57-59, 99-101)

26. Fredericks testified that there had been prior incidents of theft from the YIC but that he had never investigated them or looked at surveillance videotape because no employe had filed a written incident report. One theft involved an employe's cell phone. (N.T. 34-36)

27. At the time the of his termination, Adam Medina had been employed on the detention side as a youth care worker for three and one-half years. Medina worked the third shift, from 11:00 p.m. to 7:00 a.m., and was supervised by Fred Arnold. (N.T. 57-58)

28. At the time of his termination, Tommy Epps had been employed as a youth care worker on the detention side for ten and one-half years. Epps worked the first shift, from 7:00 a.m. to 3:00 p.m., and was supervised by William Delgado. (N.T. 57-59, 99-101)

29. The County had never previously dismissed an employee for taking something out of an employe mailbox. (N.T. 34-35)

30. The County's Youth Intervention Center has a progressive discipline policy, found at Policy # 210 "to allow sufficient opportunity to correct a problem situation." The first step of the progressive discipline policy is corrective counseling. The second step is a verbal warning. The third step is a written warning. The fourth step is a 1-day suspension. The fifth step is a 3-day suspension. The sixth step is a 5-day suspension and final warning. The seventh step is termination. (N.T. 25-27, 47; Union Exhibit 8)

31. The progressive discipline policy also states, "There are, however, violations of the rules or laws so severe as to render warning or progressive discipline futile. Immediate suspension or discharge is appropriate in these cases." (N.T. 46, 90, Union Exhibit 8)

32. Fredericks consulted with Andrea McCue, the County Human Resources Director, prior to issuing the termination notices. (N.T. 169, 243)

33. McCue relied on the County's "Guidelines for Determining Unacceptable Behavior," which included "theft or damage/destruction of County or co-worker property" as one of 16 incidents of unacceptable behavior that could lead to "possible disciplinary action (as outlined in the County's Progressive Discipline Procedure on corrective discipline)." (N.T. 243, County Exhibit 22)

34. Fredericks testified that he believed that the taking of the snacks was serious enough to justify immediate termination rather than progressive discipline because of the need for a youth care worker to be a "positive role model" for the juvenile residents of YIC. (N.T. 31)

35. Medina's prior record had two disciplines, both written reprimands. One was for leaving a resident unattended. The second was for failing to pay a five dollar fee to participate in a dress down day at work. (N.T. 57-60, 80-81)

36. Epps' disciplinary record, over his ten and one-half years of employment with the County, included over twenty incidents, including receiving at least one suspension. (N.T. 102-103)

37. Fredericks reviewed Medina's prior discipline record before issuing the termination notice, but did not consider it. Fredericks did not review Epps' disciplinary history prior to issuing the termination notice. (N.T. 43)

38. Neither Epps nor Medina had been disciplined for theft before these incidents. (N.T. 59-60, 80-81, 102-103)

39. Medina was involved in the 2010 AFSCME organizing effort. He attended meetings held by AFSCME, reported back to third shift staff members and got other employees to go to meetings and vote in favor of the Union. Medina spoke with his supervisor, Fred Arnold, about his support for the Union in May 2010, sharing with him what he thought about the Union and what he was doing with respect to the Union's efforts. (N.T. 60-61, 66)

40. During the 2010 AFSCME organizing effort, Epps talked to staff about the drive, in particular how the Union could benefit them. He talked with his supervisor, William Delgado, about the Union, stating that the Union was coming. He told William Delgado that he had talked with Union representatives. (N.T. 103-105, 131-132)

41. William Delgado is married to Christine Delgado, the supervisor of the shelter side's third shift. Ms. Delgado began the investigation and discipline at issue here after Evette Sepulveda complained to her. (N.T. 100)

42. The County did not call Ms. Delgado to testify at this unfair practice hearing because she was on a medical leave and was not released to attend. (N.T. 51-52)

43. The County has a four step grievance and appeals procedure for employes who are not covered by union collective bargaining agreements (Policy #006). The steps are the immediate supervisor; the department director (Drew Fredericks in this case), the County's Human Resources Director, Andrea McCue and finally, a panel of county officials from other departments. (N.T. 244, 245, County Exhibits 5, 6 and 7)

44. Medina and Epps appealed their termination through the steps of the County's grievance and appeals procedure. At each step, the employes' appeals were denied, Medina's on August 24 and Epps' on August 10. (N.T. 82, 83, 88, 123, 125, 127-128, 133, 245-255, County Exhibits 5, 6, 7, 11, 12, 13, 14 and 15)

45. Boddy did not appeal her termination because she was a part-time employe and the grievance appeal procedure does not cover part-time employes. (N.T. 254-55)

DISCUSSION

On June 23, 2010, the County terminated youth care workers Adam Medina and Tommy Epps from their positions at the Youth Intervention Center for taking small bags of snacks from a fellow employe's open mailbox. Medina took a bag of chips and Epps took a bag of cookies.

The Union's charge alleges that the terminations violated PERA because they were motivated by the County's animus toward the employes' support of the June 10, 2010 representation petition to accrete youth care workers into the prison guard union.

The Union contends that the discharge violated Sections 1201(a)(1) and (3) of PERA.

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 element of the St. Joseph's Hospital test. Both Medina and Epps engaged in protected activity. In June, 2010, AFSCME filed a representation petition seeking to include in its existing bargaining unit certain employes employed at the YIC, including Detention Youth Care Workers and Security Officers. Medina and Epps were involved in the Union's organizing efforts.

Medina attended meetings held by the Union, reporting back to other third shift YIC employes about those meetings. He encouraged other YIC employes to attend Union meetings and to vote in favor of the Union. Epps discussed the 2010 organizing drive with other YIC employes, explaining to them how to the presence of the Union could benefit them.

The Union proved the second element of the St. Joseph's Hospital test. The employer had knowledge of the protected activity of Medina and Epps. The Board has held that knowledge of a supervisor may be imputed to the public employer. Bensalem Township, 19 PPER ¶ 19010 (Final Order, 1987).

Medina and Epps communicated with their respective supervisors about their support for the Union. Medina spoke with his supervisor, Fred Arnold, about his support for the Union, specifically telling him what he thought about the Union and how he had been

involved with the Union's efforts. Epps discussed the Union with his supervisor, William Delgado, stating to his supervisor that the Union was coming to the YIC. He shared with his supervisor that he had met and talked with Union representatives.

The next issue is whether the union proved the third element of the St. Joseph's Hospital test, that the County was motivated by anti-union animus in discharging Medina and Epps. In a charge of discrimination it is the employer's motivation which creates the offense. Perry County v. PLRB, 364 A.2d 898 (Pa. Cmwlth. 1994).

Since improper motivation is rarely admitted and since the decision makers who are accused of anti-union motivation do not always reveal their inner-most private mental processes, the Board allows the fact finder to infer anti-union animus from the record as a whole. PLRB v. Montgomery County Geriatric and Rehabilitation Center, 13 PPER ¶ 13242 (Final Order, 1982); St. Joseph's Hospital, supra. However, 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, supra at 313.

In Child Development Council of Centre County (Small World Day Care Center), 9 PPER ¶ 9188 (Final Order, 1978), the Board stated:

> There are a number of factors the Board considers in determining whether anti-union animus was a factor in the layoff of the Complainant: the entire background of the case, including any anti-union activities by the employer; statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge, or layoff, of the adversely affected employe, the effect of the discharge on unionization efforts-for example, whether leading organizers have been eliminated; the extent to which the discharged or laid-off employe engaged in union activities; and whether the action complained of was "inherently destructive" of important employe rights."

9 PPER 9188, at 380.

The Board has also noted that the timing of the adverse action against the employes would be a factor that could be used to infer that anti-union animus was the motivation for the employer action. PLRB v. Berks County (Berks Heim County Home), 13 PPER ¶ 13277 (Final Order, 1982).

The Union, as the complainant, bears the burden of proving the elements of the alleged violations by substantial and legally credible evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A. 2d 1069 (1977). Substantial evidence means evidence that does more than just create a suspicion of the existence of the fact necessary to establish each element of the unfair practice charge. Township of Upper Makefield, 10 PPER ¶ 10299 (Nisi Order of Dismissal, 1979).

The Union argues that anti-union animus can be inferred from the close timing of the termination to Medina and Epps' exercise of protected activity; from the disparate treatment of Medina and Epps from other employes with similar rule infractions and finally, from the County's inadequate explanation for its decision to terminate.

The first basis for inferring animus is the close timing argument. The Union argues that the timing of the termination is suspicious because of its proximity to the date of the Union's representation petition. Timing, when considered with other factors, may be considered as a factor from which to infer anti-union animus. See Berks Heim County Home, 13 PPER ¶13277 (Final Order, 1982), aff'd 14 PPER ¶14106 (Berks CCP, 1983).

On June 10, 2010, the Union filed a Petition for Representation with the PLRB, seeking to represent detention and security officer employes at the YIC. Just before this, Medina communicated to his supervisor his support for the Union. Epps had likewise communicated his support for the Union to his supervisor. On June 20, Sepulveda made her complaint to her supervisor, Christina Delgado, who reported Medina and Epps on June 21, 2010. The County dismissed Medina and Epps on June 23, 2010.

The County argues that the timing of the discipline simply relates to the date when a fellow employe Sepulveda came forward and complained to her supervisor about snacks being taken from her mailbox. On June 20, Sepulveda complained about the missing snacks to her supervisor, Delgado, who then reported it to Director Fredericks. Three days later, after review of videotape and interviewing the suspected employes, Fredericks made his termination recommendation.

The Union responds that the termination of these employes so close to the representation petition and their informing supervisors of their support for the union is deserving of some weight, given the facts of this case. Particularly worth noting are the employes' disciplinary records. At the time of his dismissal, Medina had only two previous disciplines. Despite this overall good employment record, the County chose to ignore its own progressive discipline policy and terminate Medina on June 23, 2010. As for Epps, who had a worse disciplinary record, with over 10 disciplines, the County allowed him to remain an employe until this incident.

On this record, it is possible to infer anti-union animus from the close timing of the termination of Medina and Epps to their display of Union support. The timing of events alone, however, will not suffice to infer animus. Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005).

The Union's second basis for inferring that anti-union animus motivated the termination decision was the disparate disciplinary treatment of these two individuals. The Union contends that the County's discipline of these two employes is an example of disparate treatment because the County has disciplined employes less severely for serious instances of misconduct.

The County responds that the cases the union points to did not involve theft, so the disparate disciplinary treatment argument cannot be applied. Yet, one of Medina's prior offenses was leaving a juvenile unattended, a seemingly serious infraction, for which the County only issued a written reprimand. The Union's disparate treatment argument is deserving of some weight.

The Union's third basis for arguing that anti-union animus can be inferred from the termination decisions is the County's inadequate explanation for the termination. The Union's argument that the County's explanation was inadequate has several subsidiary arguments. Two of these arguments are compelling. The first attacks the manner of the investigation; the second attacks the discipline itself.

The Union's first argument is that the County failed to explain that Fredericks' investigation of Sepulveda's complaint of missing snacks was done in a neutral and objective manner. Fredericks admitted that for some time before Sepulveda's June 20 complaint other employes had been complaining of missing items from their mailboxes. One employe was missing a cell phone. Despite these incidents of alleged theft, the County conducted no investigation. The County did not utilize the surveillance videotape to catch the violators. The County did not even discipline employes for placing personal items in the employe mailboxes, which they had been warned not to do.

Fredericks testified that the investigation was not aimed at the union supporters. He explained that before this incident, the YIC administration had not investigated alleged theft because no employe had come forward and filed a written unusual incident report. However, this contention is contradicted by the evidence. Delgado and Fredericks first looked at two shifts of surveillance videotape before they had received

Sepulveda's written incident report. They then concluded that Medina and Epps had taken the snacks. Fredericks then went on to direct Sepulveda and the suspected employes to write incident reports. Also, no one from the County talked directly with Sepulveda following her second unusual incident report in which said she would not mind Medina taking her snacks.

This evidence casts doubt on the County's explanation that it investigated Sepulveda's complaint of missing snacks in a neutral and objective manner. This evidence can lead to an inference that anti-union animus motivated the employer's decision. Child Development Council of Centre County, supra.

The Union's second argument is that the County failed to present an adequate explanation for its decision to terminate the two employes. The Union contends that the County's explanation for not following its own progressive discipline procedure is deficient. An employer's failure to consider its own progressive discipline policy, or other mitigating circumstances, supports an inference that the employer harbors anti-union animus toward the employe. Lehighton School District, 26 PPER ¶ 26115 (Final Order, 1995); aff'd 682 A.2d 439 (Pa. Cmwlth. 1996)

The County's personnel policies provide for progressive discipline, from a verbal warning with six steps leading up to termination. Also the personnel policy gives full-time employes the right to appeal discipline to higher levels, up to a hearing panel of county officials. Medina and Epps appealed their termination to the highest level. However, at every level, the County sustained the discipline.

The Union argues that this was the first time Medina had been disciplined for theft. As for Epps, nothing in the record shows that he had ever been disciplined for theft. Both employes took small bags of snacks. This was the first time that the County had ever terminated any employe for taking items from another employe's open mailbox. Sepulveda complained that the theft had been going on for a month, but the County limited its review of the surveillance videotape to the last two days of Sepulveda's complaint. The Union argues that, given the facts of this case, if the County had followed its progressive discipline policy, the County would have imposed less severe discipline than termination.

The County responds that it offered an adequate explanation for not following progressive discipline. The County cites a provision in the personnel policy specifically stating that it may terminate employes immediately in cases "so severe as to render warning or progressive discipline futile". The County contends that this is such a case, given that the youth care workers must serve as positive role models for the juvenile offenders at the YIC.

However, taking small bags of snacks does not seem to be "so severe as to render warning or progressive discipline futile." Furthermore, the complainant, Sepulveda, filed a second unusual incident report stating, in part, that "I really wouldn't care if he wanted chips because I knew him and it wouldn't be a big deal." Sepulveda testified that no one from the County talked with her about whether she specifically gave Medina permission to take snacks from her mailbox. Had someone from the County interviewed her, the discipline may not have even issued. The employe behavior at issue in this case is appropriate for the application of the County's progressive discipline policy.

The County appeals panel rejected the progressive discipline argument when Medina and Epps raised it. However, the County could fulfill its mission of operating a juvenile detention facility with high standards of employe behavior without imposing the most severe discipline possible on these employes for taking small bags of snacks.

In summary, based on the inferences drawn from the facts of record, it may be concluded that the Union has sustained its burden of proving that the County was motivated by anti-union animus in terminating Medina and Epps. Absent the protected activity of Medina and Epps, the County would not have terminated their employment.

Having met all three parts of the St. Joseph's Hospital test, the Union has proven that the County violated Section 1201(a)(3) of PERA.

Section 1201(a)(1) Allegation

The Union also has charged that the County 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 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.

When all the of the circumstances of this case are considered as a whole, it must be concluded that the County's actions in this case would have a tendency to coerce a reasonable employe from exercising his rights guaranteed under Article IV of PERA. Just thirteen days after the Union had filed a representation petition, the County terminated two Union supporters, Medina and Epps, for taking small snack items from a fellow employes' open mailbox. The County's failure to follow progressive discipline in their cases could lead a reasonable employe to conclude that the County's approach to these incidents was more a reaction to the employes' exercise of protected activity than an application work rules to correct employe behavior. Having met the "tendency to coerce" test, the Union has satisfied its burden of proving that the County violated Section 1201(a)(1) of PERA.

CONCLUSIONS

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

1. That Lancaster County is a public employer within the meaning of Section 301(1) of PERA.

2. That the American Federation of State, County and Municipal Employes, District Council 87 is an employe organization within the meaning of Section 301(3) of PERA.

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

4. That the County has 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 County shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from discriminating against employes to encourage or discourage membership in an employe organization.

3. Take the following affirmative action:

(a) Offer unconditional reinstatement to Adam Medina and Tommy Epps to their former positions without prejudice to any right or privilege enjoyed by them and pay them a sum equal to the amount they would have earned as wages had they been retained as employes, along with interest.

(b) The back pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the date the employes were discharged to the point of the proper offer of reinstatement. The quarterly period shall begin the first day of January, April, July and October. Loss of pay shall be determined by deducting from a sum equal to that which the officers would normally have earned each quarter or portion thereof, their net earnings actually earned or which would have been earned with the exercise of due diligence during that period, earnings which would have been lost through sickness and any unemployment compensation received by Medina and Epps. Earnings in one particular quarter shall have no effect on the back pay liability for any other quarter.

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days.

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(e) Serve a copy of the attached affidavit of compliance upon the Association.

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 nineteenth day of December, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner