

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GARY SULLIVAN :
 :
 V. : Case No. PERA-C-10-243-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 DEPARTMENT OF PUBLIC WELFARE :
 PHILADELPHIA CAO :

PROPOSED DECISION AND ORDER

On July 9, 2010, Gary Sullivan filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Public Welfare, Philadelphia County Assistance Office (Commonwealth), violated Section 1201(a)(1), (3) and (4) of the Public Employee Relations Act (PERA). In its charge, Mr. Sullivan specifically alleged that the Commonwealth evaluated his work performance for the rating period June 2009 through June 2010 as less than satisfactory because he engaged in the protected activity of refraining from joining a union and because he filed a previous unfair practice charge with the Board (docketed at Case No. PERA-C-09-275-E).

On July 26, 2010, the Secretary of the Board issued a complaint and notice of hearing, directing that a hearing take place on November 8, 2010 in Harrisburg. I continued the hearing to February 11, 2010 in Harrisburg. At the hearing on that date, the parties were afforded an opportunity to present evidence and cross-examine witnesses. However, neither party presented evidence because the complainant did not appear for the hearing.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (43 P.S. § 1101.301(1)).
2. Gary Sullivan is a public employe within the meaning of Section 301(2) of PERA, as an employe of a public employer. (Specification of Charges; 43 P.S. § 1101.301(2)).
3. By letter dated September 28, 2010, I notified Mr. Sullivan that a hearing on his charge of unfair practices would be held on February 11, 2010 in Harrisburg at 10:00 a.m. Mr. Sullivan acknowledged that he received actual notice of the hearing date and location. He also requested that the hearing be conducted via telephone so he would not have to travel to Harrisburg. I denied that request. (File Letter: 9/28/10).
4. Board personnel obtained telephone confirmation from both parties that they would attend the February 11, 2011 hearing in Harrisburg.
5. I delayed the start of the hearing forty minutes to wait for Mr. Sullivan. During the hearing, the Commonwealth moved for dismissal of the charge. I waited in the hearing room until 11:45 a.m. for Mr. Sullivan to arrive at the hearing, but he did not appear. During this time, Board personnel unsuccessfully attempted to contact Mr. Sullivan. (N.T. 3-5).
6. On February 11, 2010, I left a voice mail message for Mr. Sullivan inviting him to explain his absence from the hearing. Also, on that date, I sent a letter to Mr. Sullivan requesting that he provide me with a written explanation for his absence by February 25, 2011. On February 25, 2011, Mr. Sullivan contacted the Board and indicated that he deliberately remained silent about his failure to appear and that he did not appear because he believed that he could not prevail on his charge. (File Letter: 2/11/11).

DISCUSSION

During the week prior to the hearing date, Board personnel contacted both Mr. Sullivan and the Commonwealth. Both Mr. Sullivan and the Commonwealth's attorney confirmed that they would be in attendance at the hearing on February 11, 2011. At 10:00

a.m. on February 11, 2011, the Commonwealth's representatives, the Commonwealth's attorney and I were in attendance; Mr. Sullivan was not present. I waited until 10:40 a.m. to begin the hearing to give Mr. Sullivan time to arrive or to, at a minimum, contact me or Board personnel to explain his absence or lateness. During that same period of time, Board personnel affirmatively attempted to contact Mr. Sullivan without success.

On the record at the hearing, the Commonwealth denied all the allegations set forth in the specification of charges and moved to dismiss the charge. I deferred my ruling on the Commonwealth's motion until I could hear the reasons for Mr. Sullivan's absence. The hearing concluded without Mr. Sullivan at 10:42 a.m. I remained in the hearing room until 11:45 a.m.; Mr. Sullivan never appeared or contacted the Board that day. That same day, I left a voice mail message for Mr. Sullivan inviting him to explain his absence. Also, on February 11, 2011, I wrote a letter to Mr. Sullivan (and copied the Commonwealth's attorney) informing him that he had until February 25, 2011, to explain in writing the reason for his absence at the hearing, considering he confirmed his attendance with Board personnel. On February 25, 2011, Mr. Sullivan contacted the Board and indicated that he deliberately remained silent about his failure to appear. He also stated that he did not appear because he believed that he could not prevail on his charge. Mr. Sullivan's behavior is inexcusable and unacceptable. He deliberately refused to attend the hearing, after confirming his attendance, and intentionally caused important personnel to travel from Philadelphia to Harrisburg for nothing. Mr. Sullivan's sinister calculation and design has wasted important public resources at the Board, the Office of Administration and the County Assistance Office.

Accordingly, Mr. Sullivan has deliberately refused to prosecute his charge. Consequently, he has failed to prove the necessary elements of the causes of action raised and pled in the charge, which the Commonwealth has affirmatively denied. Thus, I am granting the Commonwealth's motion, and I am dismissing the charge with prejudice.

CONCLUSIONS

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

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA.
2. Mr. Sullivan is an employe within the meaning of Section 301(2) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has not committed unfair practices in violation of Section 1201(a)(1), (3) or (4) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-eighth day of February, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner