COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION, LOCAL 668, SERVICE EMPLOYEES INTERNATIONAL UNION	:	
v.	:	Case No. PERA-C-11-50-E
BERKS COUNTY, BERKS COUNTY PRISON BOARD	:	

PROPOSED DECISION AND ORDER

On February 18, 2011, the Pennsylvania Social Services Union, Local 668, Service Employees International Union (Union or Complainant), filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Berks County and the Berks County Prison Board (County or Respondent) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act).

On March 4, 2011, 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 dispute by mutual agreement of the parties and May 18, 2011 in Reading was assigned as the time and place of hearing, if necessary before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was necessary and was held as scheduled, at which time, the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Following the hearing, the Union submitted a brief on August 1, 2011, the County on September 8, 2011, and the Union a rebuttal brief on October 18, 2011.

The hearing 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. Berks County and the Berks County Prison Board is a public employer within the meaning of Section 301(1) of the Act.

2. The Pennsylvania Social Services Union, Local 668, Service Employees International Union is an employe organization within the meaning of Section 301(3) of the Act.

3. The Union is the exclusive bargaining representative of a unit of employes at the Berks County prison that includes caseworkers.

4. The County and the Union are parties to a collective bargaining agreement that covers the wages, hours and terms and condition of employment of employes at Berks County prison.

5. On August 1, 2008, the County and the Union entered into a side agreement for an alternative work schedule that allows employes to choose to work a four days a week, ten hour day schedule (also known as the 4-10 agreement). The 4-10 agreement would help employes with the increasingly high cost of commuting due to rising gasoline costs. (N.T. 14-16, Respondent’s Exhibit 3)

6. Karen Arms is a caseworker at the Berks County Prison. She is also chief steward for the Union. (N.T. 15-16, 76)

7. Among their duties, the caseworkers are in charge of orienting and completing an intake assessment and classification of every inmate who enters the prison. In addition, they do case management on the unit they are assigned to, which involves completing the proper classifications for every inmate. (N.T. 77-78, Respondent Exhibit 4)

8. Arms helped the union bargain the collective bargaining agreement that is currently in effect between the County and the Union as well as the 4-10 side agreement. (N.T. 16)

9. The 4-10 agreement states, in relevant part, "The County has approved a compressed work week program on a trial basis and may revert back to the original 5 day work week at any time with a thirty (30) day notification to the effected employees." (N.T. 16, Respondent's Exhibit 3)

10. Initially, 4 of the caseworkers, including Arms, chose the new 4-10 schedule. (N.T. 90)

11. Because those caseworkers employed at the prison preferred to have three-day weekends, they requested to have off either Mondays or Fridays, which meant one less caseworker regularly scheduled to work on Mondays and Fridays. (N.T. 87, 91)

12. The new scheduling caused the work of processing prisoners to back up on Mondays and Tuesdays, the busiest days of the week for intake work. This back-up was worsened because the prison was contractually prohibited from mandating overtime or requiring employes to work on weekends, Fridays or Mondays. (N.T. 86)

13. In April 2009, Arms went on an extended leave of absence in to work directly for the Union. (N.T. 20)

14. On May 11, 2010, while Arms was on leave, the Union and the County met and negotiated a modified agreement on the 4-10 scheduling agreement to assist the County with the problems caused by employes taking off on Fridays and Mondays. The modified agreement required that one caseworker, Verna Lynn Ragsdale, switch her day off from Fridays to Thursdays and required another additional caseworker, either Tiffany Eye or Joanna Brown, "adjust their Monday off schedule as needed based on substantial operational needs, as it applies to the Work Release Coordinator position." (N.T. 58, 73, Complainant's Exhibit 3)

15. Additionally, the May 11, 2010 modified agreement included a 90 day trial period, as well as reserving the parties' contractual rights contained in the CBA and the other 4-10 agreement. (N.T. 58, 73, Complainant's Exhibit 3)

16. Later in 2010, Arms informed the prison that she would return from her extended leave. (N.T. 95)

17. Arms first told the prison that she would work the five day schedule. Arms' supervisor, Christa Parish, accommodated the request and hoped it would continue because of the staffing needs. Arms then asked to return to the 4-10 schedule. Parish granted this request because she was entitled under the contract to return to the schedule she was on when she first left. (N.T. 96-97, 99)

18. Arms returned to her 4-10 schedule. (N.T. 32)

19. On or about October 20, 2010, Parish informed Kevin Neff, chief shop steward that by Arms using the 4-10 schedule that takes off Monday presents a problem because of the heavy workload on Mondays. She told Neff that Arms would have to switch her day off to Tuesday, Wednesday or Thursday or Parish will give a thirty day notice to the Union to end the 4-10 schedule for all those in the treatment department that are currently

working the 4-10 schedule. Arms asked Parish directly if she had said that to Neff. Parish admitted making the statement. (N.T. 24)

20. Arms decided to agree to return to the five day schedule out of fear that if she did not do so the 4-10 schedule would be taken from the rest of the bargaining unit. She testified that she withdrew from the four day schedule "under duress." (N.T. 126, Complainant Exhibit 2)

DISCUSSION

Does an employer violate PERA when it threatens one employe that if she chooses to work the contractually provided alternative work schedule that the employer will end the alternative work schedule for the entire bargaining unit, even if the employer's threat was motivated by a desire to adequately staff the workplace, a county prison?

In 2008, the County and the Union negotiated a side agreement for a 4 days a week, 10 hours a day schedule ("4-10 schedule") to assist employes with the cost of commuting. However, the County encountered problems with the schedule's impact on staffing needs because of the employes' taking off Mondays, the busiest day of the week for intake work at the prison. For two years, the County raised these problems with the Union, yet the agreement remained in place. In 2010, the County and the Union negotiated a modification of the side agreement to require that two named caseworkers who were using the 4-10 schedule to not use Monday or Friday as their day off. On or about October 20, 2010, Christa Parish, prison treatment supervisor, informed steward Ken Neff that if Karen Arms, a caseworker, chose the 4-10 schedule, the 4-10 alternative work schedule would be eliminated for the rest of the bargaining unit.

The first charge to discuss is the Union's allegation that the County violated Section 1201(a)(1) of PERA which prohibits employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV." 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).

Arms testified credibly that she asked Parish if she made such a statement to Neff and Parish admitted that she did make the statement. Parrish testified in a way that tried to rebut that fact, but her testimony was less than persuasive: "I don't believe my words would have been that we would have cancelled the 4-10 program, but it would've been probably perceived that way." (N.T. 103)

Judging Parish's statement from the perspective of a reasonable employe, it is understandable how Arms could feel coerced to give up the alternative work schedule. Also, she was a union steward and understandably felt responsible if a benefit to the members of her bargaining unit was lost due to her action. Under this pressure, she went along with the employer, in her words "under duress."

The County urges a different interpretation of the facts. The County contends that what actually happened here is that County requested Ms. Arms to cooperate with it in meeting staffing needs by not choosing the 4-10 schedule. The County contends that Arms' response to the County's request was that of an employe seeking to help the employer. On this interpretation, the County contends that it is impossible to reach the legal conclusion that the County threatened to eliminate the 4-10 schedule if Ms. Arms did not agree to withdraw from the alternative schedule.

The County's interpretation is not persuasive. Instead, the Union's interpretation that Arms was coerced into making the choice makes more sense, given all the facts of record. When analyzed under the standard for judging coercion allegations, it appears to be a threat.

The County also defends Parish's statement by arguing, on balance, the County's staffing concerns outweighed the any possible interference with employe rights. "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.

The County argues that its supervisor's statement was made because of workload needs and after the Union had earlier agreed to modify the 4-10 agreement for two employes. Even if the County's factual assertions are correct, as a matter of law, the position taken by treatment supervisor Parish in October 2010 went too far. Parish threatened the entire unit with elimination of a collectively bargained side agreement if one employe did not go along with the employer's demands. The supervisor's approach to the problem was antithetical to the collective bargaining rights that are fundamental to PERA. Rather than threatening an employe for exercising a contractual right, the County should have approached the union to bargain over the issue.

The second section alleged to have been violated is Section 1201(a)(5)of PERA which prohibits employers from "[r]efusing to bargain collectively in good faith with an employe representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative." 43 P.S. § 1101.1201(a)(5). Although an employer violates Section 1201(a)(5) of the Public Employe Relations Act when it unilaterally changes a collective bargaining agreement, when a change has not happened, the Board views the allegation of a change as premature and will dismiss a Section 1201(a)(5) charge. APSCUF v. PLRB, 25 PPER ¶ 25124 (Final Order, 1994); aff'd 661 A.2d 898 (Pa. Cmwlth. 1994), appeal denied, 666 A.2d 1058 (Pa. 1995). In the present case, the employer has threatened to end, but has not actually ended the agreement. Accordingly, there will be no finding that the County has violated Section 1201(a)(5) of PERA.

CONCLUSIONS

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

1. That Berks County and the Berks County Prison Board is a public employer within the meaning of Section 301(1) of the Act.

2. That the Pennsylvania Social Services Union, Local 668, Service Employees International Union is an employe organization within the meaning of Section 301(3) of the Act.

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

4. That the County has violated Section 1201(a)(1) of PERA.

5. That the County has not violated Section 1201(a)(5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall:

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

2. Take the following affirmative action:

(a) offer to return Karen Arms to the 4-10 schedule she was on prior to October 20, 2010;

(b) 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;

(c) 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

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 thirtieth day of March, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner