COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	Case No. PERA-D-16-282-E
	:	(PERA-R-15-158-E)
	:	
BATH BOROUGH	:	

PROPOSED ORDER OF DISMISSAL

On October 3, 2016, Bath Borough (Borough) filed with the Pennsylvania Labor Relations Board (Board) a petition for decertification, pursuant to Section 607 of the Public Employe Relations Act (PERA), alleging a good-faith doubt of the majority support for AFSCME, Council 88 (Union), the exclusive bargaining representative of all full-time and regular part-time employes of the Borough, certified by the Board on September 17, 2015, at PERA-R-15-158-E. On October 27, 2015, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Thursday, December 1, 2016. I granted the parties' joint request for a continuance and rescheduled the hearing for December 6, 2016. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. At the close of the hearing, the parties elected to present oral arguments in lieu of filing post-hearing briefs. The Board received the notes of testimony from the hearing on December 13, 2016.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. The Borough is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 4)

3. Bradford T. Flynn has been the Borough Manager since May 11, 2015. (N.T. 6-7)

4. In February 2016, the Borough permanently laid off the crossing guards, leaving four employes of the Borough. (N.T. 8; Employe list)

5. Since the Board's certification of the Union as the bargaining representative of Borough employes on September 17, 2015, the Borough and the Union have engaged in collective bargaining negotiations, but have not entered into a collective bargaining agreement. (N.T. 8-9)

6. In July 2016, at the public workshop, Borough employe, William Yob, expressed to Mr. Flynn his curiosity about negotiations. Mr. Yob stated that there were past experiences with negotiations and "that he did not want to be a part of this unit." Mr. Yob has not made any statements since then that contradicted his July 2016 statement. (N.T. 9-10, 13-14)

7. Marena Rasmus is an employe of the Borough, and she was a new hire in 2016. In July 2016, Mr. Flynn met with Ms. Rasmus to give her a 90-day review. During her 90-day review meeting, Ms. Rasmus stated that "she though it was ridiculous that a unit of our size was even being considered for a Union." Ms. Rasmus attended the AFSCME conference in Erie, Pennsylvania from Friday September 30, 2016 through Sunday, October 2, 2016. (N.T. 10-11, 13-14, 17-19, 22)

DISCUSSION

The Borough contends that the statements of Mr. Yob and Ms. Rasmus, two out of four of the bargaining unit employes, created a good-faith doubt of the Union's majority status.[1] I disagree.

Section 607 of PERA provides as follows:

> If there is a duly certified representative: (i) a public employe or a group of public employes may file a petition for decertification provided it is supported by a thirty per cent showing of interest, or (ii) a public employer alleging a good faith doubt of the majority status of said representative may file a petition in accordance with the rules and regulations established by the [B]oard, subject to the provisions of clause (7) of Section 605.

43 P.S. § 1101.607.

In Annville-Cleona School District, 13 PPER ¶ 13054 (Final Order, 1982), the Board emphasized the similarity between the good-faith doubt standard in Section 607 of PERA and the standard of good-faith doubt applied by the National Board. Accordingly, the Annville-Cleona Board affirmed the hearing examiner's reliance on National Board law when determining whether a public employer established a good-faith doubt in support of a decertification petition seeking an election. In Annville-Cleona, the examiner provided the standard for determining good-faith doubt as follows:

> The language "good faith doubt of majority status," found in Section 607, embodies the same standard followed by the National Labor Relations Board (NLRB) in cases where an employer requests an election to determine whether a union has a majority status, pursuant to Section 9(c)(1)(B) of the National Labor Relations Act (NLRA). In this leading case on this point, the NLRB stated:
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> > ' . . . we therefore now hold that in petitioning the [NLRB] for an election to question the continuing majority of a previously certified incumbent union, an employer, in addition to showing the union's claim for continued recognition, must demonstrate by objective considerations that it has some reasonable grounds for believing that the union has lost its majority status since its certification."

U.S. Gypsum Co., 61 LRRM 1384, 1386 (1966).

In adopting this standard, the NLRB cited Laystrom Manufacturing Co., 58 LRRM 1624 (1965), which found: "**A showing of such (good faith and**

[1] The Borough also introduced post-petition evidence that Borough employe Kenneth Fogel stated to Mr. Flynn that he did not wish to be part of the bargaining unit. This conversation, however, occurred the day before the hearing and after the petition for decertification was filed. Accordingly, I cannot rely on the statement to conclude that, at the time of the filing of the decertification petition, the Borough reasonably possessed a good-faith doubt of majority status. Similarly, the Union, during its cross-examination of Mr. Flynn, elicited testimony that Ms. Rasmus attended negotiation sessions on or after October 20, 2016. I have excluded that testimonial evidence, as well as Union Exhibit One, which memorializes the October 20, 2016 collective bargaining session, as post-petition evidence that could not have an effect on the Borough's good-faith doubt of majority status, at the time of the filing of the petition for decertification.

reasonable) doubt, however, requires more than an employer's mere assertion of it and more than proof of the employer's subjective frame of mind. The assertion must be supported by objective considerations . . . ."

Finally, by way of further background, the NLRB in Celanese Corporation of America, 28 LRRM 1363 (1951) indicated:

> "By its very nature, the issue of whether an employer has questioned the union's majority in good faith cannot be resolved by resort to any simple formula. **It can only be answered in light of totality of all the circumstances involved in a particular case**. But, among such circumstances, two factors would seem to be essential prerequisites to any finding that the employer raised a majority issue in good faith in cases which a union had been certified. There must, first of all, have been some reasonable grounds for believing that the union had lost its majority status since its certification. And, secondly, the majority issue must not have been raised by the employer in a context of illegal antiunion activities or other conduct by the employer aimed at causing disaffection from the union or indicating that in raising the majority issue the employer was merely seeking to gain time in which to undermine the union." 28 LRRM at 1366 (emphasis in original).

Annville-Cleona School District, 12 PPER ¶ 12321 (Proposed Decision and Order, 1981), aff'd, 13 PPER ¶ 13054 at 477 (Final Order, 1982)(emphasis added).

Under the totality of the circumstances, a reasonable person would not objectively possess a doubt, in good faith, regarding the majority status of the Union in this case. I have given no weight to the statement made by Ms. Rasmus, that she believes that the bargaining unit is too small for a union. First, an objective reading of her statement does not necessarily support the Borough's interpretation that she did not support the Union's representation of the bargaining unit. The statement supports multiple subjective interpretations and, without clarification, the Borough may not reasonably rely on its own subjective and desired interpretation to support its position of good-faith doubt. Also, I have not given any weight to the fact that Ms. Rasmus attended a three-day Union conference in Erie because it is not clear on this record that the Borough Manager was aware of her conference attendance or that it was the reason for her taking leave on Friday, September 30, 2016. Absent such knowledge, the fact that she attended the conference does not undermine the Borough's claim of good-faith doubt.

Perhaps the most compelling reason why the statement of Ms. Rasmus does not support the Borough's good-faith doubt is the context in which it was made. Ms. Rasmus was a new employe who was subject to a 90-day review process by her direct supervisor, the Borough Manager. The record does not reveal whether Ms. Rasmus was on probation for those first 90 days. However, a reasonable person in her position at the time would find the experience somewhat stressful and intimidating. In this regard, any discussion of the Union during her 90-day review meeting was coercive, and her statement during that meeting is simply not objectively reliable to establish or measure her alleged lack of support for the Union.

Accordingly, the Borough has established that Mr. Yob stated that he did not want to be part of the unit. Based on this statement, a reasonable person would conclude that Mr. Yob did not support the Union's representation of the bargaining unit. However, the statement by one out of four employes demonstrating a lack of Union support does not objectively or reasonably establish a good-faith doubt of the Union's majority status, under the totality of the circumstances.

CONCLUSIONS

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

1. The Borough is a public employer within the meaning of section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The combined statements of Mr. Yob and Ms. Rasmus, during the summer of 2016, did not reasonably raise a good-faith doubt regarding the majority status of the Union, within the meaning of Section 607 of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Petition for Decertification filed by the Borough is dismissed.

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 be and become absolute and final.

SIGNED, DATED AND MAILED this sixteenth day of December, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner