

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TRANSPORT WORKERS UNION OF AMERICA, :
LOCAL 282 :
: :
v. : CASE NO. PERA-C-16-311-E
: :
: :
BRISTOL TOWNSHIP :
:

PROPOSED DECISION AND ORDER

On August 18, 2016, the Transport Workers Union of America, Local 282, (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Bristol Township (Township or Employer) violated Section 1201(a)(1) and (2) of the Public Employe Relations Act (PERA).

On November 17, 2016, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating January 9, 2017, in Harrisburg, as the time and place of hearing.

The hearing was necessary and was held on January 9, 2017, in Harrisburg, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed its post-hearing brief February 20, 2017. The Township filed its post-hearing brief on April 5, 2017.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer within the meaning of PERA. (N.T. 5-6).

2. The Union is an employe organization within the meaning of PERA. (N.T. 5-6).

3. Scott Swichar is the Deputy Township Manager for Bristol Township. As part of his job duties, he oversees the trash recycling program. Swichar is not a bargaining unit member. (N.T. 11).

4. On October 22, 2016, a Saturday, Swichar was administering the Township's clean-up day. A clean-up day allows Township residents to drop off bulk trash at a designated place. (N.T. 11-12).

5. Carl D'Emidio is a Roads and Public Works bargaining unit member who was scheduled to work the clean-up day. He is a team leader in Public Works. On clean-up day, D'Emidio was assigned to the back hoe. (N.T. 12-13).

6. Employes working clean-up were to report at 7:00 a.m. The event started at 8:00 a.m. Swichar arrived at approximately 7:45 a.m. At approximately 9:00 a.m., Swichar noticed that D'Emidio was not in the back hoe or at the site. (N.T. 17, 46).

7. Swichar noticed that D'Emidio's Township truck was at the site of the clean-up before he left the site. (N.T. 51).

8. Around 9 a.m., Swichar then drove to the Bristol Township School District building, where he knew there was Union meeting. It is only a few minutes' drive between the two sites. (N.T. 55).

9. The Union was holding a regularly scheduled meeting in the School District building's cafeteria. The parking lot is visible from the cafeteria. Approximately 35 Union members were in attendance. (N.T. 29, 36).

10. The Union meeting started at 9:00 a.m. Walter Walsh, a Union officer who was leading the meeting, was informed right before the meeting started that there was a Township truck in the parking lot. Walsh walked out to the parking lot and confronted Swichar, whom he recognized. Walsh told Swichar he had to leave and Swichar replied that he would leave when he is ready. Swichar left after about five minutes. Swichar was in the school lot for approximately ten minutes total. (N.T. 29-31).

11. Swichar never told Walsh he was looking for D'Emidio nor did he say why he was in the school lot. (N.T. 31-32, 42).

12. When Swichar returned to the clean-up site from the school district building, he noticed D'Emidio was present. Swichar did not ask D'Emidio where he was. (N.T. 54-56).

DISCUSSION

The Union alleges that the Township violated Section 1201(a)(1) and (2) of PERA when a Township manager, Swichar, parked his truck outside of a Union meeting for about 10 minutes on October 22, 2016.

Section 1201(a)(2) of PERA prohibits a public employer from "[d]ominating or interfering with the formation, existence or administration of any employe organization." 43 P.S. §1101.1201(a)(2). The Board has held that a public employer violates Section 1201(a)(2) when it provides financial or administrative support to one employee organization and not to others. Montgomery County Intermediate Unit, 17 PPER ¶ 17124 (Final Order, 1986). In the present case, such facts are not present. Accordingly, the Union's Section 1201(a)(2) charge is dismissed.

Section 1201(a)(1) of PERA prohibits an employer 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 employer commits an independent violation of Section 1201(a)(1) of PERA "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).

This Board has adopted the "tendency to coerce" test of NLRB v. Brookwood Furniture Division of the United States Industries, 701 F.2d. 452 (5th Cir. 1983), to determine whether an independent violation of Section 1201(a)(1) has occurred. In Department of Corrections, Pittsburgh SCI, supra, the Board reiterated the law with respect to Section 1201(a)(1) as follows:

"An independent violation of Section 1201(a)(1) occurs where, based on the totality of the circumstances, the employer's actions would have the tendency to coerce or interfere with the protected activities of a reasonable employee, regardless of whether anyone was actually coerced. Fink v. Clarion County, 32 PPER ¶ 32165 (Final Order, 2001). The employer's motive for its actions is irrelevant. Northwestern Education Association v. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)."

35 PPER at 303. If the employer's conduct was not coercive, then no violation of Section 1201(a)(1) may be found. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, supra. Nor may a violation of section 1201(a)(1) be found if the employer presents a legitimate basis for its conduct that outweighs any coercive effect the conduct may have. Temple University, 23 PPER ¶ 23118 (Proposed Decision and Order, 1992), affirmed on other grounds, 25 PPER ¶ 25121 (Final Order 1994); Philadelphia Community College, 20 PPER ¶ 20194 (Proposed Decision and Order, 1989). But if the employer presents no legitimate basis for its conduct that otherwise is coercive, then a violation of section 1201(a)(1) must be found. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995).

On this record it is clear that the unexplained presence of Swichar at the Union meeting was an interference with Union members' Section 401 protected right to engage in lawful concerted activities for the purpose of mutual aid or protection. 43 P.S. §1101.401. The protected right in this matter would be to hold and attend regular Union meetings. On this record, Swichar arrived in his township vehicle at the beginning of the scheduled meeting. His truck was immediately noted by Union members and brought to the attention of Walsh. Walsh confronted Swichar and asked him to leave. Swichar did not explain why he was there and did not immediately leave when requested to by Walsh. Interference exists because I find that a reasonable union employe would view Swichar's unexplained presence at the Union meeting to be threatening and tend to discourage participation in future meetings.

The Township argues in defense that Swichar had a legitimate basis for being in the school district parking lot on October 22, 2016, which outweighs any coercive effect which may have occurred. The

Township argues that Swichar's search for D'Emidio was a legitimate managerial action in attempting to locate a missing employe. (Township's Brief at page 7). Assuming that looking for D'Emidio at a Union meeting is a legitimate basis, the record in this matter does not support that Swichar was looking for D'Emidio when he was parked in the school district parking lot outside of the Union meeting. Swichar's testimony consists of a substantial part of the transcript in this matter and little of it is credible or consistent. Swichar claims to have gone to the school district building to look for D'Emidio, however he testified that saw D'Emidio's truck at the clean-up site before traveling to the school district. Before leaving for the school district building, Swichar never asked anyone if they had seen D'Emidio nor did he attempt to call D'Emidio. Swichar incredibly claims that he did not ask anyone where D'Emidio was because he "didn't think they were going to tell me the truth and be honest with me." (N.T. 47). Furthermore, when confronted by Walsh in the parking lot, Swichar never asked Walsh if he had seen D'Emidio or explained that he was looking for him. Additionally, when Swichar soon found D'Emidio upon returning to the clean-up site he never asked D'Emidio where he was or further investigated the matter. Under cross-examination, Swichar admitted that he didn't even know how long D'Emidio was allegedly missing and he displayed inconsistent and confused memory of the timeline of the morning in question. (N.T. 55-56). For these reasons, I find that Swichar's testimony that he went to the school district building to look for D'Emidio to not be credible. Since, on this record, the Township had no legitimate basis to have a manager outside of the Union meeting on October 22, 2016, the Township violated Section 1201(a)(1) of PERA.

CONCLUSIONS

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

1. The Township 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 hereto.
4. The Township has committed unfair practices in violation of Section 1201(a)(1) of PERA.
5. The Township has not committed unfair practices in violation of Section 1201(a)(2) 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 Township shall:

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

2. Take the following affirmative action:

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

(b) 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

(c) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 at Harrisburg, Pennsylvania, this second day of May, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

The Township hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public