

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776 :
 :
 : CASE NO. PERA-C-16-256-E
 v. :
 :
 :
 JUNIATA COUNTY :

PROPOSED DECISION AND ORDER

On September 2, 2016, the Teamsters Local 776 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Juniata County (County or Employer) violated Section 1201(a) (1) and (5) of the Public Employee Relations Act (PERA).

On September 22, 2016, the Secretary of the Board issued a complaint and notice of hearing designating December 9, 2017, in Harrisburg, as the time and place of hearing.

A hearing was held on December 9, 2016, in Harrisburg, before the undersigned Hearing Examiner. An additional day of hearing was held on March 24, 2017, in Mifflintown. 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 June 5, 2017. The County filed its post-hearing brief on July 3, 2017.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3).
3. The Union is the exclusive representative for all full-time and regular part-time nonprofessional employes in the county residual unit including but not limited to employes in the Commissioners' Office, Assessment Office, Emergency Management Services, 911 Center, Human Services, Prison Cooks, Maintenance Department, Penn State Cooperative Extension, Planning Commission, Tax Claim Office, Treasurer's Office, Veterans Affairs Office, Voter Registration Office and Weights and Measures Office; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act. (PERA-R-07-315-E).
4. On August 11, 2016, a Petition for Decertification was filed with the Board by David Arentz with the required showing of interest. (PERA-D-16-231-E).

5. On September 14, 2016, the undersigned Hearing Examiner placed the decertification petition filed at PERA-D-16-231-E in abeyance pending the resolution of the instant unfair practice charge. (PERA-D-231-E).

6. Dorothy Chubb has been an employe of the County for the last eighteen years and is a bargaining unit member. (N.T. 21).

7. Chubb signed the decertification petition on August 3, 2016. (N.T. 22; Union Exhibit 1).

8. One or two weeks after she signed the petition on August 3, 2016, Chubb talked to Todd Graybill, one of the County Commissioners. Chubb expressed to Graybill that she was concerned she would lose benefits if the Union was decertified. Graybill told Chubb that she would not lose any benefits if the Union was decertified. (N.T. 30-32, 128-129).

DISCUSSION

As an initial matter, I first address an evidentiary issue. After Chubb signed the petition, she talked to Patricia Leiter on the phone. Leiter is a bargaining unit member and, at the time the petition was filed, Union steward. Leiter told Chubb on the phone that Leiter was concerned about the petition and the effect losing the Union could have on bargaining unit members' benefits. Leiter testified that Chubb responded that she did not care because she retires in two years and that she was upset that Aaron Miller, who was just hired and had a college degree, was making more money than her. Leiter testified that Chubb further stated that she (Chubb) had talked to Todd Graybill, one of the County Commissioners, who told her that he could not do anything to give her a raise until the Union is decertified. (N.T. 8, 27-28, 52-53). The County timely objected to Leiter's testimony as to Chubb's statements. (N.T. 53). I now find that the testimony made by Leiter about statements made to her by Chubb regarding Chubb's conversation with Graybill is improper hearsay and shall not be admitted to the record.

Addressing the Union's claims in this matter, an employer engages in an unfair practice under Section 1201(a) (5) when it bypasses the exclusive bargaining representative and deals with the employes. Association of Mifflin County Educators v. Mifflin County School Dist., 21 PPER ¶ 21127 (Final Order, 1990). Accordingly, this Board has stated the following:

To afford public employes the full benefit and protection of the collective bargaining rights guaranteed to them by the Act, it is necessary to insulate them from any efforts by the public employer, direct or indirect, to undercut the authority of the employes' duly selected representative, or fragment the unity of the bargaining unit. Any such action by the public employer is considered to be an unfair practice.

PLRB v. Northern Bedford School Dist., 7 PPER 194, 195 (Nisi Decision and Order, 1976).

Ordinarily, rights of free speech remain operational during periods of negotiation between the parties. For example, the Board has held since the inception of PERA that parties negotiating a collective bargaining agreement normally remain free to communicate with the media. Southeast Delco Education Association v. Southeast Delco School District, 27 PPER ¶ 27258 (Final Order, 1996); PLRB v. Portage Area School District, 7 PPER 325 (Nisi Decision and Order, 1976); PLRB v. Bethlehem Area School District, 3 PPER 108 (Nisi Decision and Order, 1973). The law is equally well established that an employer is not precluded from communicating, in noncoercive terms, with employees during negotiations, so long as such communications are not an attempt to negotiate directly with bargaining unit members. Chester County Intermediate Unit No. 24, 35 PPER 110 (Final Order, 2004).

However, an employer's expression may not include actual or veiled threats of reprisal or promise of benefit directed to the employees for their participation in protected activities and may not constitute an attempt to circumvent the bargaining representative and negotiate directly with employees. PLRB v. Williamsport School District, 6 PPER 57 (Nisi Decision and Order, 1975).

In this matter the record is clear that Graybill, a County Commissioner, spoke directly to Chubb, a bargaining unit member, and assured Chubb that she would not lose benefits if the Union was decertified. The conversation was testified to as thus:

Chubb: I had a conversation with [Graybill]. . . .
. I asked him if there was no Union, if I would lose any of the benefits that I should or might have, and he said that as far as he is concerned, no, but he could not tell me about health benefits, which I didn't care about anyhow, because I didn't take them. I just wanted to make sure that if there was no Union, whether I would lose my personal holidays that I already have, my vacation time, or sick time.

. . . .

Question: And he said you would not lose anything?

Chubb: He said to the best of his knowledge, I probably would not lose anything, but he could not state what the health insurance would be.

(N.T. 30-31).

. . . .

Graybill: [Chubb] asked me the one day that - I walked into her office and she says, "I got a call from [the Union Steward] saying that we're going to lose this and we're going to lose that," and I said, "It's common sense. Just think about it. Why would we ever do that??" That is all I said.

(N.T. 128).

I find that Graybill's communication to Chubb, in either version as testified to above, in light of the record as a whole, can plainly be understood as a promise to Chubb that she would not lose any benefits if the Union were decertified. Thus, Graybill's communication to Chubb was a promise of benefits and an attempt to circumvent the bargaining representative by negotiating directly with an employe, and therefore, a violation of Section 1201(a) (5) of PERA.

The Union did not specifically charge an independent violation of Section (a) (1), however the Board has recognized since 1974 that when an employer promises benefits to employes before an election, that employer commits a violation of Section 1201(a)(1) of the Act. Upper Darby Township, 4 PPER 105 (Decision and Order and Notice of Pre-Second Election Conference, 1974). In this case, the record is clear that after the petition for decertification had had been filed and before an election to decertify had occurred, Graybill told Chubb that she would not lose benefits if the Union was decertified. I find that this communication from Graybill falls within Upper Darby Township and is thus also an independent violation of Section 1201(a)(1) of PERA.

The Union also alleges that the County committed an unfair practice by permitting the decertification petition to be circulated at work during work times. However, the record in this matter does not support a conclusion that the employer permitted the petition to be circulated at work.

CONCLUSIONS

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

1. The County 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 County has committed unfair practices in violation of Section 1201(a)(1) of PERA.
5. The County has committed unfair practices in violation of Section 1201(a)(1) and (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, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. 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 employes 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 seventh day of July, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776

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JUNIATA COUNTY

AFFIDAVIT OF COMPLIANCE

The County hereby certifies that it has ceased and desisted from its violation of Section 1201(a) (1) and (5) of the Public Employee 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