

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WILLIAM C. PLOUFFE, JR. :
 :
 v. : Case No. PERA-C-09-459-E
 :
 STATE SYSTEM OF HIGHER EDUCATION :
 KUTZTOWN UNIVERSITY :
 F. JAVIER CEVALLOS :
 SHARON PICUS :
 ANNE ZAYAITZ :

ORDER

On January 20, 2012, William C. Plouffe, Jr. (Complainant) filed with the Pennsylvania Labor Relations Board (Board) a Request to Reopen the Record for after-discovered evidence of an alleged "fraud on the Court." Complainant's request comes after the Board issued a Final Order in the above captioned matter on July 20, 2010. In the Final Order, the Board, *inter alia*, credited the testimony of Dean Anne Zayaitz and Dr. Paul Quinn, Sr. to find that Complainant did not request union representation during a meeting with Dean Zayaitz. The Board therefore concluded that the State System of Higher Education, Kutztown University (SSHE) did not violate Section 1201(a)(1) of the Public Employe Relations Act (PERA). The Complainant filed a timely appeal of the Board's Final Order with the Commonwealth Court on August 19, 2010, which he voluntarily discontinued on September 7, 2011.

Initially, we note that the Board does not have jurisdiction to entertain the Complainant's Request to Reopen the Record that is filed after an appeal of the Final Order has been taken to Commonwealth Court. Once an appeal from a Final Order is filed with the Commonwealth Court, the Board is divested of jurisdiction to proceed further with the merits of the case. Pa. R.A.P. 1701(a). In the absence of a timely request for reconsideration,¹ reopening the record to allow after-discovered evidence, as Complainant requests here, is not one of the limited exceptions where the Board may retain jurisdiction after an appeal has been filed from the Final Order. Pa. R.A.P. 1701(b). Accordingly, pursuant to Pa. R.A.P. 1701, the Board lacks jurisdiction to consider Complainant's Request to Reopen the Record.

Moreover, even if the Board would have jurisdiction to consider the Complainant's Request to Reopen the Record, the Complainant's request must be denied. A request to reopen a record to permit introduction of additional evidence may only be granted where that evidence (1) is new, (2) could not have been obtained in time for hearing with exercise of due diligence, (3) is relevant and non-cumulative, (4) is not for purposes of impeachment, and (5) would likely compel a different result. Minersville Area School District v. Minersville Area School Service Personnel Association, 518 A.2d 874

¹ Section 95.98(g)(2) of the Board's Rules and Regulations provide that a request for reconsideration must be filed within seven calendar days of the issuance of the Final Order. 34 Pa. Code § 95.98(g)(2).

(Pa. Cmwlth. 1986); Middletown Township Police Benevolent Association v. Middletown Township, 24 PPER ¶24167 (Final Order, 1993).

In the Request to Reopen the Record, the Complainant alleges that he recently discovered evidence that Dean Zayaitz had misrepresented in the Board proceedings that the interview with the Complainant was not investigatory in nature. However, even if the meeting between Dean Zayaitz and the Complainant was investigatory in nature, that does not change the outcome. The fact remains that the Complainant did not make a request for union representation, which is a dispositive element to establishing a Weingarten-type violation.²

Nevertheless, Complainant also alleges that this newly-discovered evidence renders Dean Zayaitz's testimony before the Board not credible. Thus, the Complainant requests that, in light of this new evidence, the Board reopen the record and reassess its credibility determinations to find that the Complainant had, in fact, requested union representation during the meeting with Dean Zayaitz. However, the new evidence is clearly only being offered for purposes of impeachment. As such, it cannot support reopening of the record.

Accordingly, even if the Board were to have jurisdiction to consider the Request to Reopen the Record, after a thorough review of all matters of record, the Complainant's request must be denied.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Request to Reopen the Record filed by William C. Plouffe, Jr. is hereby dismissed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this twenty-first day of February, 2012. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

² The Board has adopted the rule set forth in NLRB v. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), that employes have the right, upon request, to union representation at investigatory interviews that they reasonably believe may result in discipline. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 591 Pa. 176, 916 A.2d 541 (2007).