

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SEIU LOCAL 668 PSSU :
 :
 v. : Case No. PERA-C-18-120-E
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 YORK COUNTY and YORK COUNTY COURT :
 OF COMMON PLEAS :

FINAL ORDER

This matter arose when the Service Employees International Union, Local 668 PSSU (Union) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (PLRB or Board) on May 25, 2018, alleging that York County (County) and York County Court of Common Pleas (Court) violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA or Act) by retaliating against Adult Probation Officer Jason Walker for having the Union file a grievance on his behalf. On June 18, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing to be held on September 10, 2018. On July 2, 2018, the Court filed a Motion to Dismiss, arguing that the Board lacks jurisdiction. The County filed a similar Motion on July 3, 2018. In lieu of an evidentiary hearing, the parties elected to submit factual stipulations, which were received on September 13, 2018.

The salient facts are summarized as follows. The County and the Court are both public employers within the meaning of Section 301(1) of PERA, and the Union is the exclusive bargaining representative for a unit of court-appointed professional employees at the County, including Adult Probation Officers. (FF 1, 3). Adult Probation Officer Jason Walker received a written reprimand on February 26, 2018, arising from a violation of the County's Search and Seizure Policy. (FF 8). On March 2, 2018, the Union filed a grievance on APO Walker's behalf. (FF 9). On March 5, 2018, the Director of Probation Services, April Billet-Barclay, responded to the grievance asserting that the matter was not subject to the grievance process under the collective bargaining agreement. (FF 10). Director Billet-Barclay increased APO Walker's discipline to a two-day suspension based on his gross disregard of the Search and Seizure Policy and noted that APO Walker's behavior showed a "blatant disregard for so many policies which renders the court vulnerable to civil suit." (FF 10).

In the Proposed Decision and Order (PDO) issued on March 13, 2019, the Hearing Examiner found that there was a nondiscriminatory explanation for APO Walker's suspension, namely, various policy infractions and Fourth Amendment violations. Thus, the Hearing Examiner concluded that there was no violation of Section 1201(a)(1) or (3) of PERA. The Hearing Examiner therefore ordered and directed the rescission of the Complaint and the dismissal of the Charge of Unfair Practices.

Despite prevailing before the Hearing Examiner, the Court has filed exceptions to the PDO concerning the Board's jurisdiction over this matter. However, the Court's challenge to the Board's jurisdiction must be dismissed as there is binding precedent expressly holding that the Board has jurisdiction to hear unfair practice cases concerning the rights of court-

appointed employees under PERA. Teamsters Local 115 v. PLRB, 619 A.2d 382 (Pa. Cmwlth. 1992), appeal denied, 634 A.2d 1119 (Pa. 1993). Accordingly, the PDO must be sustained.¹

In its charge, the Union alleged that the County and Court violated Section 1201(a)(1) and (3) of PERA by retaliating against APO Walker in response to a grievance filed on his behalf. To succeed on this claim, the Union has the burden of showing that: (1) the employe engaged in protected activity under PERA; (2) the employer was aware of the protected activity; and (3) the employer's action was motivated by the employe's involvement in protected activity. St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977). It is an employer's motive which creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981); PLRB v. Ficon, 254 A.2d 3 (Pa. 1969).

Here, the stipulated facts submitted by the parties reveal that the Union failed to meet its burden of proving a *prima facie* case of discrimination. The stipulated facts incorporate by reference the extremely detailed letter sent by Director Billet-Barclay to APO Walker on March 5, 2018 demonstrating Director Billet-Barclay's deep concern over the manner in which APO Walker conducted a search without any authority to do so, followed by an untimely report, and his willingness to blame his fellow officers for same. The record contains absolutely no evidence, other than alleged timing, to support a conclusion that Director Billet-Barclay was retaliating against APO Walker as a result of the grievance filed on his behalf. Here, the record clearly indicates that the County and Court had legitimate reasons for the increase in APO Walker's discipline based on the number and severity of the violations occasioned by his illegal search. The County and Court's nondiscriminatory reason for its action and for the suspension imposed on APO Walker, is a defense to the charge of discrimination, and therefore the Hearing Examiner did not err in concluding that there was no violation of Section 1201(a)(1) or (3) of PERA. See Wright Line, 251 NLRB 1083 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989, 102 S.Ct. 1612 (1982).

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the County and Court had not committed a violation of Section 1201(a)(1) or (3) of PERA, and properly rescinded the Complaint and dismissed the Charge of Unfair Practices. As such, the exceptions must be dismissed, and the PDO sustained.

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the York County Court of Common Pleas are hereby dismissed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this twentieth day of April, 2021. 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.

¹ The Union has not filed exceptions to the Hearing Examiner's conclusion that there was no violation of Section 1201(a)(1) or (3) of PERA or the dismissal of the Charge of Unfair Practice. 34 Pa. Code §95.98(a)(3) ("[a]n exception not specifically raised shall be waived").