COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MICHAEL SEASHOLTZ	:	
	:	
v.	:	Case No. PERA-C-10-159-E
	:	
MONTGOMERY COUNTY	:	

PROPOSED DECISION AND ORDER

On May 5, 2010, Michael Seasholtz filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Montgomery County (County) violated Section 1201(a)(3) of the Public Employe Relations Act (PERA). In his charge, Mr. Seasholtz specifically alleged that the County discriminatorily denied him a promotion to the position of corporal ranger in Park Region II, as a result of his organizing efforts on behalf of SEIU (Union).

On May 17, 2010, the Secretary of the Board issued a complaint and notice of hearing, designating a hearing date of July 1, 2010. I rescheduled the hearing for October 15, 2010, because the County's attorney had not received adequate notice of the hearing and had prior commitments on the scheduled hearing date. During the hearing on October 15th, a Union attorney represented Mr. Seasholtz, and both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties submitted post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The County is a political subdivision of the Commonwealth of Pennsylvania and a public employer within the meaning of Section 301(1) of PERA. (43 P.S. §1101.301(1); 119 PA MANUAL 6-35).

2. The Union is an employe organization which membership includes public employes and which exists to deal with public employers regarding labor disputes and terms and conditions of employment within the meaning of Section 301(3) of PERA. (43 P.S. § 1101.301(3)).

3. Michael Seasholtz is a public employe and a full-time park ranger at the County's Norristown Farm Park. (N.T. 11-12, 33).

4. In the Parks and Heritage Services Department (Department) at the County, park rangers report to corporal rangers; corporal rangers report to park supervisors, called superintendents; superintendents report to regional managers; regional managers report to the director of the Department. (N.T. 39-40).

5. The County has four regions, each of which is centered around a park. Region I contains Lower Perkiomen Valley Park; Region II contains Green Lane County Park; Region III contains Norristown Farm Park; and Region IV contains Lorimar Park. Each park has one corporal and one superintendent. The Department employs fourteen park rangers throughout the four regions. (N.T. 40-41, 44).

6. Rich Wood is the regional manager of Region II. (N.T. 30-40).

7. Mr. Seasholtz has been assigned to Norristown Farm Park in Region III since 2008. (N.T. 42, 85).

8. The corporal ranger position for which Mr. Seasholtz applied was at Green Lane Park in Region II. Region II is closer to Mr. Seasholtz's home. (N.T. 42).

9. In 2008 and again in 2010, the Union attempted to organize County employes. Mr. Seasholtz was involved in both organizing campaigns. Mr. Seasholtz worked with Union organizer Ray Martinez and sought to obtain employe interest in the Union. The Union chose to focus first on Human Services employes and then the parks employes. (N.T. 45-47, 52-53).

10. Mr. Seasholtz spoke to park employes about the Union, solicited them to sign cards, invited them to meetings and obtained help from other park employes to sign employes. Mr. Seasholtz attended meetings with County employes and introduced himself to them. (N.T. 47-48, 51).

11. No County managers or supervisors from the Department attended any of the meetings. (N.T. 83).

12. In 2008, Mr. Seasholtz informed William Gross, his regional manager at the time, that he was actively volunteering as an organizer for the Union. Mr. Gross is no longer a regional manager. (N.T. 53-54).

13. Ken Shellenberger is the superintendent of the Norristown Farm Park in Region III, where Mr. Seasholtz works. Mr. Seasholtz informed Mr. Shellenberger of his Union activity on or about January 25, 2010. Mr. Shellenberger replied that he had no problem with Mr. Seasholtz. (N.T. 48-51, 87-88).

14. Mr. Seasholtz used a cup with the Union insignia at work and he had a Union bumper sticker on his car, which he drove to work and parked in the Region III employe parking lot. (N.T. 52).

15. Ron Ahlbrandt is the Director of the Department. On January 22, 2010, Mr. Ahlbrandt issued a memo to park supervisors and regional managers to post the corporal position. The memo stated that the position was internal only and not for public review. It also stated that both full and part-time employes would be considered. (N.T. 55; Union Exhibit 4).

16. On February 2, 2010, Mr. Seasholtz applied for the full-time corporal ranger position at Region II. (N.T. 54, 82; County Exhibit 1).

17. Mr. Seasholtz was interviewed for the position by a three member panel. The panel members were Mr. Wood, Mr. Shope and Mr. Morgan. By letter dated March 10, 2010, Mr. Wood informed Mr. Seasholtz that the County selected another candidate for the Region II corporal ranger position. (N.T. 55, 77; Union Exhibit 5).

18. The County awarded the position to Scott Gearhart. Mr. Gearhart was a full-time ranger already at Region II working under Mr. Wood. (N.T. 56).

DISCUSSION

In his charge, Mr. Seasholtz alleged that he was denied a promotion to corporal ranger in Region II because of his union organizing activities. To sustain his charge under Section 1201(3), Mr. Seasholtz has the burden of proving that he engaged in activity protected by PERA; that the County knew that he engaged in protected activity and that the County's refusal to promote Mr. Seasholtz was motivated by his involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996); York City Employes Union v. City of York, 29 PPER ¶ 29235 (Final order, 1998).

Among the factors upon which an inference of animus may be drawn are the entire background of the case (including any anti-union activities of the employer) any employer statements showing state of mind, a failure of the employer to adequately explain the adverse action including disparate treatment, the timing of the adverse action and the extent to which the action was "inherently destructive" of important employe rights. PLRB

v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Final Order, 1978). Evidence of these factors may be part of the employe's prima facie case. Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). Only if the union establishes a prima facie case that an employer's adverse action against an employe was motivated by the employe's protected activity does the burden shift to the employer. West Shore Educ. Ass'n v. West Shore Sch. Dist., 23 PPER ¶ 23031 (Final Order, 1992).

1. MOTION FOR DIRECTED VERDICT TO DISMISS CHARGE OF UNFAIR PRACTICES

At the close of the Union's case-in-chief, the County moved for directed verdict to dismiss the charge. (N.T. 101). The County does not dispute the fact that Mr. Seasholtz had been involved in Union organizing activities prior to his application for the corporal position. (County Post-hearing Brief at 2-3). The County contends that the employes responsible for promoting internal candidates for the corporal ranger position at Green Lane Park did not know of Mr. Seasholtz's protected activity and that the Union's case is devoid of evidence in support of anti-union animus. (N.T. 101; County Post-hearing Brief at 1-4). In the interest of administrative economy, I deferred my ruling on the motion, and the County presented its rebuttal case. (N.T. 104-106). However, in considering a motion to dismiss a charge, I am limited to evaluating whether the Union has established a prima facie case, during its case-in-chief, with substantial, competent evidence that I have credited. Brock v. Lincoln University Chapter, American Ass'n of University Professors, 22 PPER ¶ 22158 at 351 (Final Order, 1991). Accordingly, I will first evaluate the Union's discrimination claim without considering any of the evidence elicited during the County's case.

A. County Knowledge

The Union argues that the evidence demonstrates that the County had knowledge of Mr. Seasholtz's Union activities. Mr. Seasholtz participated in a number of open and visible Union activities. Mr. Seasholtz attended open meetings and introduced himself to employes at those meetings. (Union Brief at 9). There were employes hostile to Union organizing attending those meetings. (Union Brief at 9). The Union asserts that the existence of snitches or management spies is a reality of the labor movement. (Union Brief at 9). The Union further contends as follows:

> To suggest that in a County the size of Montgomery, the employer would have no knowledge as to [who] the active union supporters are once the organizing drive has "gone public" i.e. opened up its meetings to all employees regardless of whether or not they are supportive of the drive, is naïve and ridiculous.

(Union Post-hearing Brief at 9). Mr. Seasholtz also went door to door canvassing employes on behalf of the Union and not all employes were supportive of the Union. "Here again, the reality is there are anti union employees who regularly provide information to the employer regarding union organizing efforts." (Union Post-hearing Brief at 9). Mr. Seasholtz used an SEIU coffee mug at work and maintained a purple SEIU bumper sticker on the car he drove to work. (Union Brief at 10). The Union further emphasizes that Mr. Seasholtz directly informed Ken Shellenberger, the superintendent of the Norristown Farm Park in Region III where Mr. Seasholtz works, of his Union activity. (Union Post-hearing Brief at 10).

Additionally, the Union argues that the Department is small enough to apply the small plant doctrine and infer knowledge on the part of the decision makers in this case. In Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 (Final Order, 1992), the Board stated the following:

> The small plant doctrine allows the Board to infer knowledge to a small employer when the facts establish that employes' protected activities were "carried out in such a manner, or at such times that in the normal course of events, [the employer] must have noticed [the activity]." However, the mere fact that an employer's plant is of a small size standing alone is an insufficient basis upon which to apply this small plant doctrine.

Temple, 23 PPER at 64. The Board further stated that small plant doctrine is inapplicable absent close supervision. Id. "The very foundation of the small plant doctrine is that in

a physically limited setting containing few individuals little goes unnoticed." Id. (emphasis added).

In Temple, the Board refused to apply the small plant doctrine to the dental school at Temple University concluding that an employer of 106 bargaining unit eligible employes was too large and that there was no evidence "that the dental school supervisors routinely moved throughout the faculty with such regularity that this Board could infer that the University 'must have noticed' the protected activity." Id. However, the Board cited with approval to PLRB v. Williamsport Area Sch. Dist., 14 PPER 14235 (Proposed Decision and Order, 1983), wherein Hearing Examiner Leonard applied the small plant doctrine. In Williamsport, the discriminatee worked in a small garage with three other employes and the supervisor responsible for refusing to call the discriminatee back to work. Hearing Examiner Leonard concluded that the close supervision in a small, confined interior space resulted in the supervisor having actual knowledge of union activity. In this regard, Mr. Leonard stated that "Mr. Cowden, the garage supervisor, knew of general Union activity in the District because he answered employes' questions about changes a union would bring." Williamsport, 14 PPER at 534.

The Temple Board also cited to AFSCME, Council 13 v. Bensalem Township, 19 PPER ¶ 19010 (Final Order, 1987). In Bensalem, the Board listed several facts that supported an inference of employer knowledge of the discriminatee's union activities. The common denominator of those facts is that there must be a nexus between the employe's union activities and the physical location where non-unit eligible supervisors or managers regularly work and supervise employes. It was in reference to this connection that the Pennsylvania Supreme Court affirmed the Board's conclusion "that any knowledgeable administrator would necessarily have known which of the people on a staff of this size were engaged in union organizing activities." St. Joseph's, 373 A.2d at 1072. Accordingly, the Union must adduce facts to establish the following three-part conjunctive standard for the small plant doctrine to apply: (1) an employer operation with a small (albeit unspecified) number of employes; (2) a defined work space; and (3) supervisor(s) who regularly interact(s) with employes within the same defined work space, i.e., the nexus.

The Union emphasizes that the Department employs only fourteen rangers in four park regions and that there is one superintendent for each park region. The Union, therefore, asserts that the Department is heavily supervised and "`any knowledgeable administrator would necessarily have known which of the people on a staff of this size were engaged in union organizing activities.'" (Union Post-hearing Brief at 12, quoting St. Joseph's, 373 A.2d 1072). Clearly, there is no direct evidence that any of the panel members had knowledge of Mr. Seasholtz's Union activities. The question is whether an inference can be drawn on this record that Mr. Wood, Mr. Shope or Mr. Morgan knew of Mr. Seasholtz's Union activities. I conclude that there is insufficient evidence on this record to impute knowledge to the County. The record does not establish a nexus between Mr. Seasholtz's Union activities and the panel members or Region II where the panel members perform their supervisory and managerial duties.[1]

Mr. Seasholtz was involved in two organizing campaigns, during which he solicited Union support at open meetings and at employes' homes. However, no County managers or supervisors from the Department attended any of the meetings, and there is no evidence that County management knew of his solicitation involvement. Although Mr. Seasholtz displayed a Union coffee mug and bumper sticker, there is no evidence indicating that the managers at Green Lane Park would have reason to see Mr. Seasholtz's mug or bumper sticker at Norristown Farm Park. Although Mr. Seasholtz told his park superintendent at Norristown Farm Park of his Union activities, there is no evidence that there were meetings or other opportunities for managers and/or supervisors from various park regions to communicate with each other.

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[1] Mr. Seasholtz filed another charge of unfair practices against the County, at Case No. PERA-C-10-297-E, wherein he alleged that the County discriminated against him by refusing to give him a lateral transfer to a park ranger position at Green Lane Park in Region II because of his Union organizing activities. In that case, I concluded that the Union established sufficient facts to infer that the managers in Region II, who selected another candidate for the park ranger position, possessed knowledge of Mr. Seasholtz's Union activities. However, that charge was filed subsequent to this one resulting in the development of additional facts that are not of record here. Accordingly, the two conclusions, while contrary, are consistent with the unique records for each individual case.

The Union has argued that I should find County knowledge based on certain assumptions. However, I am unable to conclude that Mr. Shellenberger informed or would have informed the members of the Wood-Shope-Morgan panel or any other managers in the Department, based on this record. Assumptions can lead to myriad unsubstantiated and erroneous conclusions. For example, Mr. Shellenberger told Mr. Seasholtz that he had no problem with him. I could assume from this that Mr. Shellenberger deliberately refused to reveal Mr. Seasholtz's Union activity because he had no problem with him and perhaps liked him or agreed with his Union efforts. Moreover, as much as the Union wants me to assume that Mr. Seasholtz's open Union activities were sufficient to place management at Green Lane Park on notice, I could also assume that Mr. Seasholtz did not believe that his open activities were sufficient to place his park superintendent on notice, otherwise he may not have felt compelled to inform Mr. Shellenberger of the Union activities.

The Union also posits that I should assume that employes hostile to the Union would inform management of Mr. Seasholtz's activities and that I should assume that there are management spies that attend open meetings. In this regard, the Union contends that concluding that management did not know of Mr. Seasholtz's activities in a county the size of Montgomery would be "naïve and ridiculous." Although the Department is somewhat small, Montgomery County is a very large government operation. The record shows that Mr. Seasholtz met with and solicited employes who did not support the Union. However, I am unwilling to assume that these employes are spies or informants. Furthermore, even if I made such assumptions, there is no basis to assume that any of these so-called spies informed any of the members of the Wood-Shope-Morgan panel. The assumptions that must be made to make the connection to employer knowledge here are just too numerous and unsubstantiated to rely upon to support a conclusion. Administrative conclusions must be supported by substantial evidence not assumptions. The Union has weaved together a cloak of assumptions, hiding the lack of substantial evidence, which creates only the illusion of employer knowledge. However, the same cloak could easily cover another set of assumptions, taking on a different form and illustrating yet a different tale.

In applying the small plant doctrine, the Board has recognized that, where certain distinct facts are present, an inference of employer knowledge may be drawn. However, the necessary predicate facts are not present in this case. Although the Department may be small, the Union failed to establish that Department managers or supervisors in Region II routinely moved throughout the park facilities in Region II or other regions with such regularity to yield the inference that managers 'must have noticed' the protected activity. The park system is an open, outdoor work space, not a building with defined and limited interior spaces and boundaries. There is no evidence on the record establishing, or from which I could infer, that supervisors in this open space system regularly interact with subordinates such that they would be aware of employe matters, interests, concerns or conversations. Employes in the park system could easily meet and discuss Union matters in private and maintain secrecy. Therefore, the small plant doctrine is inapplicable in this large, outdoor employment environment, the nature of which severely limits supervision. Applying the doctrine here would require numerous, unsubstantiated assumptions rather reasonable inferences based on substantial evidence.

B. Motive

On this record, the Union's case lacks substantial evidence to support an inference of unlawful motive. The record contains no evidence of anti-union activities of County employes or anti-union statements demonstrating an unlawful state of mind on the part of any supervisory or management level employes. Although Mr. Seasholtz was engaged in Union organizing activities in 2010 which was close in timing to his application for the promotion to corporal ranger in Region II, timing alone is insufficient to establish unlawful motive. Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004). The Union has not established the requisite nexus between Mr. Seasholtz's Union organizing activities and the County's selection of another County employe for the Region II corporal park ranger position. Also, the Union did not demonstrate inadequate County explanations or shifting or untruthful County explanations for selecting another candidate for the corporal ranger position at Green Lane Park in Region II.

Accordingly, the County's motion for directed verdict to dismiss the charge is granted. The Union did not establish two of the three necessary elements for a prima facie case of discrimination as required by St. Joseph's, i.e., employe knowledge of protected activity and unlawful motive.

CONCLUSIONS

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

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. Mr. Seasholtz is a public employe within the meaning of Section 301(2) of PERA.

4. The Board has jurisdiction over the parties hereto.

5. The County has not committed unfair practices in violation of Section 1201(a)(3) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifteenth day of June, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner