

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

DEPUTY SHERIFFS ASSOCIATION :  
OF CHESTER COUNTY :  
 :  
v. : Case No. PERA-C-12-68-E  
 :  
 :  
CHESTER COUNTY :

**PROPOSED DECISION AND ORDER**

On March 5, 2012, the Deputy Sheriffs Association of Chester County (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Chester County (County or Respondent) alleging that the County violated sections 1201(a)(1) and (3) of the Public Employe Relations Act (PERA).

On March 26, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and September 25, 2012 in Harrisburg was assigned as the time and place of hearing if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was necessary, as conciliation did not resolve the dispute, and held as scheduled, at which time the parties presented testimony, introduced documentary evidence and cross-examined witnesses.

The examiner, on the basis of the briefs and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. Chester County is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act. (N.T. 6-7)
2. The Deputy Sheriffs Association of Chester County is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. Carolyn Welsh is the Chester County Sheriff. She has recently been elected to her fourth term. (N.T. 158-159)
4. The Sheriff's Department employs 85 persons. Of these, 72 are uniformed deputy sheriffs. (N.T. 176)
5. Patrick Miller was a deputy sheriff from November, 2009 until his termination on February 16, 2012. (N.T. 9)
6. Miller was president of the Association. (N.T. 9)
7. On January 26, 2012, the Association, through counsel, sent the required "joint petition" for representation request letter to Chester County Chief Administrative Officer Mark J. Rupsis, by way of facsimile transmission and regular mail. This letter did not generate a response from the County. (N.T. 10, 11, Association Exhibit 1)
8. On January 31, 2012, five days after the letter requesting the County to join in a petition was received (via fax) by the County, Miller took off from work for a dentist's appointment. (N.T. 40)
9. At 10:02 that morning - two hours into the deputy sheriffs' shift Corporal Suzanne Campos sent an e-mail to Miller, indicating that he was a "no call/no show" and that, while a request for leave slip had been found, it had not been

approved. Accordingly, Miller was required to submit a "to/from" as to "why you did not follow policy in regards to time off." Miller replied, indicating that he did have approval, and that "I will never fill out a 'to/from' for anything ..." (N.T. 16, County Exhibit 4)

10. Ultimately, Corporal Campos determined that Miller was correct, and the leave had been approved (N.T. 83)
11. However, Campos made no attempt to address Miller's refusal to follow her order to submit the "to/from" memo, even though she considered Miller's "I will never" remark to be insubordinate and "harsh". Miller noted that his failure to submit the to/from was never an issue. (N.T. 41, 109)
12. This incident was the first time Miller noticed a "definite change" in his relationship with management. (N.T. 22)
13. On February 3, 2012, the Association filed a petition with the Board at Case No. PERA-R-12-33-E, seeking certification as the exclusive representative for all deputy sheriffs employed by the County. (N.T. 10-11, Association Exhibit 1)
14. Miller was listed on the petition as the contact person. (N.T. 10-11, Association Exhibit 1)
15. Sheriff Welsh was aware of Miller's role as the Association leader. She allowed Miller to use a second floor office to perform Association business such as drafting by-laws and other business. (N.T. 22)
16. After the Association filed the petition for election, Miller was approached by Sergeant Jason Suydam and presented with a petition from corporals and supervisors, asking that they be excluded from the unit and withdrawing their support for the Association. (N.T. 12, County Exhibit 5)
17. In addition, Vice President DeSando reported to Miller that several other supervisors told him that they had felt pressured by Sergeant Suydam to rescind their support and sign the petition. (N.T. 14)
18. On February 2, 2012, to address the issues raised by the "pressuring" allegation, Miller wrote and signed a letter on behalf of the Association, and distributed to all supervisors on February 2, 2012. The letter states:

The Association is in receipt of your request to revoke your names from any support for the [Association].

It appears your request is based on your belief that you are supervisors. However, your exact status is a matter of law that will soon be decided by the Pennsylvania Labor Relations Board as part of our petition. Our petition specifically excludes first-level supervisors and supervisors from the bargaining unit.

Accordingly, if the PLRB determines that corporals and/or sergeants are supervisors, then you will not be part of the bargaining unit the Association seeks to represent. More important, and in connection with your request, any prior statements of support by you will effectively be revoked.

If on the other hand, you are *not* supervisors, then you *will* be included in the bargaining unit. At that point, whether you choose to support the Association is entirely up to you, and can be expressed during the secret ballot election process the PLRB will conduct.

Finally, you should know that, if you are *not* supervisors as a matter of law, than any attempts by management to have you

withdraw your support from the Association and sign the petition you presented to me is *illegal*, as employees in Pennsylvania have the right to organize and join and assist unions. If you are *not* supervisors, and the Association learns that management coerced you in any way concerning your request, the Association intends to vigorously defend your rights before the Board.

(N.T. 10, 16, Association Exhibit 2 (emphasis in original))

19. On February 6, 2012, Miller was called to the Sheriff's office to meet with her. When he arrived at Sheriff Welsh's office, he saw that Association board members DeSando and Schuibbeo were already there. Joining the Sheriff were Chief Deputy Sheriff James Moyer, Captain Joseph Carbo and Lieutenant John Freas. (N.T. 17, Association Exhibit 7)
20. Miller characterized the meeting as "angry". The Sheriff raised her concerns about "lies" being spread throughout the department, particularly in that he had said management coerced employees, and that she was not happy about Miller's February 2 letter. She also mentioned the recently-filed representation petition, saying she was concerned that a lawyer had been hired by the union, she did not know what direction the Association was now going in, and "things change now." (N.T. 17-18, Association Exhibit 7)
21. During the meeting, Captain Carbo indicated that he thought the Association's role would be to simply express ideas to the Sheriff who would then advocate on employees' behalf concerning wages and pensions. (N.T. 20-21, Association Exhibit 7).
22. Miller prepared notes less than an hour after the meeting had concluded. His detailed notes reveal the following exchanges:

Sheriff: I thought you wanted to have a non-profit organization to just raise money for the Sheriff's Office.

Brad [DeSando]: I'm sorry but I have to speak at this point. I spoke to you personally very early on and you said you supported us getting [A]ct 111 [rights] so we could bargain with the Commissioners. So you had to have known ...

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Me: I do have one question. Since we have been forthcoming with all of you, I am wondering if you can answer a question for me? About a week ago we were approached by some corporals and sergeants who state that you (Sheriff) had a meeting and told them to "keep an eye on" the Association.

Captain [Carbo]: We had a supervisory meeting and in this meeting we spoke about the distraction being caused by the Association. We told supervisors to watch the direction of the Association. We may have used the term "keep an eye on it."

Sheriff: We don't want any side agendas getting through. There is [sic] some bad apples here and we don't want someone who has an ulterior motive to start pushing their agenda.

(N.T. 10, 72, Association Exhibit 7)

23. On February 14, 2012, Miller reported to work, and attended the 8:00 a.m. roll call. Corporal Suzanne Campos conducted the roll call that day. Afterwards, she was advised that several deputy sheriffs were late to roll call, including Miller. (N.T. 23, 84)

24. Corporal Campos approached Miller about an hour later, at 9:00, and met with him in a secured hallway outside the squad room. Campos asked Miller to submit a "to/from" report regarding his lateness, and Miller refused. Miller advised Campos that he did not believe in "to/from" reports and, as he was not late, he could not submit something that was not true. (N.T. 24, 86).
25. Corporal Campos then reported the incident to her sergeant, Sergeant John McCray. At about 9:15, Corporal Campos and Sergeant McCray met with Miller outside the sergeant's cubicle area. Sergeant McCray asked Miller to submit a "to/from" report, and Miller again refused. (N.T. 26, 92, 94, 115-116, 123)
26. Miller again explained that he was not late for roll call and, if the "to/from" required him to lie by saying he was, he would refuse to submit a report as he saw it as an unlawful order. (N.T. 26)
27. Campos and McCray then brought the matter to the attention Lieutenant John Freas. Those three then met with Miller at around 1:00 in the conference room of the training office. Lieutenant Freas asked Miller whether he understood the rules and consequences of disobeying a direct order, and Miller indicated that he did. As with the two prior conversations, no public, prisoners or staff were present. Miller was civil in tone throughout the exchange. (N.T. 28, 117, 125, 138)
28. Towards the end of the day, at about 3:15, Miller sent an e-mail to Campos, with copies to McCray and Freas, stating:

Throughout the day I have thought about our interaction this morning, and the more I think about it the more I return to the conclusion that I overreacted to your request. I apologize for coming across that way and not being more open minded to your suggestions. I am human like everyone else, and I mistakes too - that was a mistake. I knew that I did not violate any rules and that roll call was started early, but that is where my innocence ended. Ironically, once I refused the "To/From", I believe that I was at least borderline insubordinate and I apologize for that.

(N.T. 10, 30-31, Association Exhibit 3)

29. This e-mail was sent at 3:14 p.m. Campos and McCray admit receiving it. (N.T. 101, 128)
30. About twenty minutes later, Miller submitted a "to/from" memo to Campos by way of e-mail. Campos indicated that she did not see the to/from on that day, however. (N.T. 32, 101, Association Exhibit 4)
31. Miller also approached Campos and apologized for his failure to submit a "to/from" report. Campos thanked him for the apology, but did not tell him it was "too late" or words to that effect. (N.T. 30-32, 101)
32. In addition, Miller also met with Freas, again apologizing for his actions, and indicating that he had submitted the to/from memo to Campos. Freas indicated the matter was out of his hands. (N.T. 33, 147-148)
33. Campos admitted that Miller's belated obedience with the order had no effect on the performance of his duties on February 14, or the ability of the department to function on that day. (N.T. 117)
34. On that same day, February 14, Sheriff Welsh was advised of the incident by Lieutenant Freas, who reported Miller's insubordination to the Sheriff, with a recommendation that he be terminated. (N.T. 166, 167-168)
35. Sheriff Welsh contacted the County's Human Relations Office and advised them that she planned to terminate Miller. (N.T. 169)

36. The Sheriff's investigation of the issue consisted of hearing Freas' account and reviewing statements submitted by Campos and McCray. She did not ascertain Miller's version of events, and did not interview him. (N.T. 182-183)
37. On February 16 Miller was called into the Sheriff's office and was terminated. (N.T. 38)
38. Miller had received no other discipline prior to the incident. Lt. Freas testified that he was a good employe. (N.T. 154-155)
39. On February 15, the Sheriff learned that Miller had apologized, but she did not change the conclusion that she reached the day earlier that Miller had to be terminated. (N.T. 180-181)
40. No deputy sheriff had even even been disciplined, or discharged, for insubordination. (N.T. 120)
41. The County's Employee Policies Handbook lists "insubordinate acts or statements" as subject to discipline "up to and including termination." (N.T. 42, 46, County Exhibit 2)
42. The Sheriff's Police and Procedures Manual defines "insubordination" at Order 2.07. It does not specify a "zero tolerance" policy by which the Sheriff will terminate all employees found to have committed insubordination. (N.T. 42, 51, County Exhibit 3 at 21)
43. The Manual states that discipline is to be progressive (Order 5.18), and used as a corrective tool (Order 5.17). It also states, "Only after it has been firmly established that positive discipline has failed to resolve an issue may negative discipline be considered." (Order 5.16). (N.T. 42, 51, County Exhibit 3 at p. 23)
44. The Board, by letter dated February 14, 2012, dismissed the Association's representation petition. (N.T. 10, 71, Association Exhibit 6)

#### DISCUSSION

The Association's charge of unfair practices alleges that the County violated Section 1201(a)(1) and (3) of PERA when Sheriff Carolyn Welsh terminated the employment of deputy sheriff Patrick Miller, the Association president.

#### Section 1201(a)(3) Allegation

An employer violates section 1201(a)(3) when it discriminates against an employee for the exercise of protected activity. See, **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977).

In order to sustain a charge of discrimination under Section 1201(a)(3) of PERA, the complainant must prove that the employe engaged in protected activity, that the employer was aware of that protected activity, and that but for the protected activity the adverse action would not have been taken against the employe. **St. Joseph's Hospital v. PLRB, Id.** The complainant must establish these three elements by substantial and legally credible evidence. **Shive v. Bellefonte Area Board of School Directors**, 317 A.2d 311 (Pa. Cmwlth. 1974).

There is no dispute about the first two elements. The County agrees that the Association proved the facts to establish the first two parts of the **St. Joseph's** test.

The disputed issue in this case is the third part of the test for discrimination, employer motivation. The "motive creates the offense" under section 1201(a)(3). **PLRB v. Stairways, Inc.**, 425 A.2d 1172, 1175 (Pa. Cmwlth. 1981), quoting **PLRB v. Ficon**, 434 Pa. 383, 388, 254 A.2d 3, 5 (1969). An overt display of anti-union animus by an employer may support a finding that the employer was discriminatorily motivated. **City of Reading v.**

**PLRB**, 568 A.2d 715 (Pa. Cmwlth. 1989). An employer does not violate section 1201(a)(3) if it takes an employment action for a nondiscriminatory reason. **Kennett Consolidated School District**, 37 PPER 89 (Final Order 2006).

Since improper motivation is rarely admitted and since the decision makers who are accused of anti-union motivation do not always reveal their inner-most private mental processes, the Board allows the fact finder to infer anti-union animus from the record as a whole. **PLRB v. Montgomery County Geriatric and Rehabilitation Center**, 13 PPER ¶ 13242 (Final Order, 1982); **St. Joseph's Hospital**, *supra*. However, an inference of anti-union animus must be based on substantial evidence consisting of "more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." **Shive**, *supra* at 313.

In **Child Development Council of Centre County (Small World Day Care Center)**, 9 PPER ¶ 9188 (Final Order, 1978), the Board stated:

There are a number of factors the Board considers in determining whether anti-union animus was a factor in the layoff of the Complainant: the entire background of the case, including any anti-union activities by the employer; statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge, or layoff, of the adversely affected employe, the effect of the discharge on unionization efforts—for example, whether leading organizers have been eliminated; the extent to which the discharged or laid-off employe engaged in union activities; and whether the action complained of was "inherently destructive" of important employe rights."

9 PPER 9188, at 380.

The Board has also noted that the timing of the adverse action against the employees would be a factor that could be used to infer that anti-union animus was the motivation for the employer action. **PLRB v. Berks County (Berks Heim County Home)**, 13 PPER ¶ 13277 (Final Order, 1982).

In this case, the Association argues that animus can be inferred from five factors, that, when considered individually and as a whole, lead to the inference that the County was motivated by anti-union discrimination in terminating Miller.

The first factor to infer animus is the entire background of the case. In Miller's first three years on the job he received no discipline and had no problems with supervision. Lt. John Freas called him a good employe. Then, on January 31, 2012, just five days after the Association's lawyer requested the County enter into a joint petition for certification, Miller received a perplexing request from his supervisor. Coporal Suzanne Campos asked him to explain his absence from work even though he had been approved for leave. Later, on February 6, the Sheriff called Miller and other members of the Association's leadership to a meeting with her, Chief Deputy Sheriff James Moyer, Captain Joseph Carbo and Lieutenant John Freas to discuss concerns she had about the Association. The concerns she had included the Association filing a petition for representation and seeking collective bargaining representative status with the help of lawyers.

The second factor to infer animus is close timing in two instances. First is the close timing of the perplexing request from his supervisor for an accounting of leave on January 31, just five days after the January 26, 2012 request to the County to enter a Joint Petition for Election. The second is the Sheriff's termination of Miller on February 16, following the February 3, 2012 Petition for Representation filed with the Board.

The third factor to infer animus is that the Sheriff's termination of Miller has resulted in a leading organizer being eliminated. Deputy Sheriff Miller was the visible

head of the Association until his termination. In this role, he met directly with Sheriff Welsh during which he clearly and unequivocally stated the Association's purpose was to become an effective collective bargaining representative, not just a conduit of wage and benefit requests to Sheriff to pass on to the County.

The fourth factor to infer animus are statements of Sheriff Welsh and her top assistants that reveal official opposition to Miller's pursuit of PLRB certified employee organization status for the Association. On February 6, during a meeting with Miller and other Association leaders, Sheriff Welsh voiced displeasure at the Association's use of the Public Employee Relations Act to organize, stating that she was surprised that Association got a lawyer. "Well, once you guys hired a lawyer things changed and we are not able to help you any more." Additionally, in the same meeting, Captain Carbo admitted that the Sheriff had a meeting with the supervisors and instructed them to watch the direction of the Association.

The County attempts to minimize this factor with the argument that Sheriff Welsh testified that she actually supported the Association and that the purpose of the meeting was to make clear to Miller and other Association members that work time was for work and not for Association business. While that issue was discussed at this meeting, Sheriff Welsh also made the statements set forth above. She also contended that Miller was "spreading a lie" among the deputies when he was responding to several deputies' complaints that they had been forced to withdraw their support for the Association.

The fifth factor to infer animus is the failure of the employer to adequately explain why it terminated Miller's employment rather than hand him a lesser form of discipline. The Association points out that this was the first discipline ever received by Miller, a good employee in the words of Lt. Freas. It was also the first time that the Sheriff had ever disciplined, much less terminated, a deputy for insubordination. The Association also points out that the Sheriff terminated Miller even though Miller apologized to shift leader Campos, Sgt. McCray and Lt. Freas the same day, at 3:31 p.m. Furthermore, within minutes, Miller also sent a "to/from" to Cpl. Campos and copied Sgt. McCray.

The County argues that Sheriff Welsh had no choice but to terminate Miller's employment. The Sheriff's Department is a para-military organization and its deputies are expected to follow all legal commands. The Sheriff, as the head of the department, cannot tolerate insubordination. Sheriff Welsh testified that she terminated Miller on the advice of Lt. Freas and Chief Deputy Sheriff Moyer. When asked why she issued the highest form of discipline, she answered that "there is no correction for direct insubordination, for willfully disregarding an order."

However, the County's own policies allow for progressive discipline. The Sheriff is permitted to exercise discretion and is not bound to a merciless zero tolerance approach. Progressive discipline underlies the County's own personnel rules. The County's Employee Policies Handbook lists "insubordinate acts or statements" as subject to discipline "up to and including termination." The Sheriff's Police and Procedures Manual defines "insubordination" at Order 2.07. It does not specify a "zero tolerance" policy by which the Sheriff will terminate all employees found to have committed insubordination. The Manual states that discipline is to be progressive (Order 5.18), and used as a corrective tool (Order 5.17). It also states, "Only after it has been firmly established that positive discipline has failed to resolve an issue may negative discipline be considered." (Order 5.16).

It is notable that Sheriff Welsh did not choose to hear Miller's side of the story on the events of February 14. The Sheriff heard Freas' account and reviewed statements submitted by Campos and McCray. She did not ascertain Miller's version of events, and never interviewed him.

In light of all of this evidence, the Association has made a prima facie case to support the inference that Miller's protected activity was the motivating factor for the County's decision to terminate him.

The County argues that it would have taken the same action even in the absence of protected activity and that when this is considered, there should be no finding of animus. **Washington Township Municipal Authority**, 20 PPER ¶ 20128 (Final Order, 1989). The County offered testimony to show that the Sheriff did not possess anti-union motivation because she had a conciliatory attitude toward the Association. As an example of this, the County points out that the Sheriff provided the Association with office space for the Association to do its business. But the Association also offered persuasive evidence to show that the Sheriff's cooperative attitude changed when the Association filed a representation petition with the Board. The evidence as a whole does not rebut the prima facie case of discrimination.

Finally, the facts of this case bear some similarity to **Foster Township**, 21 PPER ¶ 21159, (Final Order, 1990), where the Board found that the termination of a union leader in another paramilitary setting, a police department, violated the PLRA and Act 111. The Board reasoned that factors to infer animus were that the termination occurred shortly after the union obtained PLRB certification and the employer's decision to not use progressive discipline and to move right to termination when it had overlooked an earlier incident of insubordination.

Another basis for finding anti-union discrimination is that the employer conduct at issue is inherently destructive of employe rights. This Board has adopted the test set forth in **NLRB v. Great Dane Trailers, Inc.**, 388 U.S. 26, 87 S.Ct 1792 (1967). **AFSCME Council 13 v. Bensalem Township**, 19 PPER ¶ 19034 (Order Denying Application for Stay, 1988); **Chester County Deputy Sheriffs Ass'n v. Chester County**, 28 PPER ¶ 28045 (Final Order, 1997). In **Great Dane**, the United States Supreme Court held that "[s]ome conduct, however, is so 'inherently destructive of employee interests' that it may be deemed proscribed without need for proof of an underlying improper motive." **Great Dane**, 388 U.S. at 33, 87 S.Ct. at 1797. If the conduct is inherently destructive, the employer has the burden of proving a legitimate business justification or of explaining its "actions as something different than they appear on their face." **Id.** "And even if the employer does come forward with counter explanations for his conduct in this situation, the Board may nevertheless draw an inference of improper motive from the conduct itself and exercise its duty to strike the proper balance between the asserted business justifications and the invasion of employee rights in light of the Act and its policy." **Id.** (emphasis added).

In this case, the Sheriff eliminated a leading organizer of the Association just as it was beginning to exercise its rights to organize and collectively bargain on behalf of the deputies. It was this Association purpose that the Sheriff and her top assistants opposed, making that clear in the February 6 meeting with Miller and Association leaders. The explanation offered by the County does not satisfy the burden of proving that the County had a legitimate business justification for Miller's termination. Miller's termination is inherently destructive of employe rights.

#### **Section 1201(a) (1) Allegation**

The Association also alleges the County's decision violated Section 1201(a) (1), which prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA." 43 P.S. 1101.1201(a) (1).

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. An independent violation of Section 1201(a) (1) will be found if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive regardless of whether employes have been shown to, in fact, have been coerced. **Northwestern School District**, 16 PPER ¶ 16092 at 242 (Final Order, 1985).

In **Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI**, 35 PPER ¶ 97 (Final Order 2004), 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. **Id.** 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 another ground**, 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).

Based on all of the circumstances of this case, it must be concluded that the termination of the leading organizer of the Association, immediately on the heels filing a petition for representation, for an incident he apologized for and rectified on the very same day it occurred, would tend to coerce a reasonable sheriff's deputy in the exercise of his or her protected rights. **Foster Township, supra**. Based on the reasoning set forth in the Section 1201(a) (3) discussion, the County's offered explanation does not constitute a legitimate basis for the termination that would outweigh its coercive effect on employees.

#### CONCLUSIONS

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

1. That Chester County is a public employer within the meaning of Section 301(1) of PERA.
2. That the Deputy Sheriffs Association of Chester County is an employee organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That Chester County has committed unfair practices in violation of Sections 1201(a) (1) and 1201(a) (3) of PERA.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the County 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. Cease and desist from discriminating against employes to encourage or discourage membership in an employe organization.
3. Take the following affirmative action:
  - (a) Offer unconditional reinstatement to Patrick Miller to his former position without prejudice to any right or privilege enjoyed by him and pay him a sum equal to the amount he would have earned as wages had he been retained as an employe, along with interest.
  - (b) Expunge from Patrick Miller's record any reference to the February 16, 2012 termination.
  - (c) The back pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the date Miller was terminated to the point of the proper offer of reinstatement. The quarterly period shall begin the first day of January, April, July and October. Loss of pay shall be determined by deducting from a sum equal to that which the officers would normally have earned each quarter or portion thereof, their net earnings actually earned or which would have been earned with the exercise of due diligence during that period, earnings which would have been lost through sickness and any unemployment compensation received by Mr. Miller. Earnings in one particular quarter shall have no effect on the back pay liability for any other quarter.
  - (d) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days.
  - (e) 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.
  - (f) Serve a copy of the attached affidavit of compliance upon the Association.

**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 from Harrisburg, Pennsylvania this eleventh day of December, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner