

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DANIEL C. ANGELUCCI :
 :
v. : CASE NO. PERA-C-14-44-E
 :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA BOARD OF PROBATION :
AND PAROLE :

PROPOSED DECISION AND ORDER

On February 7, 2014, Daniel C. Angelucci (Angelucci or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole (Commonwealth or PBPP), alleging that the Commonwealth violated Section 1201(a)(1) through (9) of the Public Employe Relations Act (PERA or Act). Specifically, Angelucci alleged that the Commonwealth violated the Act by issuing him a pre-disciplinary letter on January 30, 2014 for an issue that occurred in December 2012 in retaliation for his protected activity.

On February 27, 2014, the Secretary issued a Complaint and Notice of Hearing, designating June 16, 2014, in Harrisburg as the time and place of hearing, if necessary. The hearing was necessary and was held on June 16, 2014. The Complainant is not an attorney and appeared unrepresented by counsel for the hearing. At the outset of the hearing, Complainant requested a continuance because several of the witnesses he obtained subpoenas for were not present. (N.T. 10-11, 18). The Commonwealth objected to any continuance on the basis that the witnesses who were allegedly under subpoena had not been properly served. (N.T. 11-14). I deferred any ruling on the issue of service of the subpoenas and requested the parties to file briefs in support of their respective positions. (N.T. 18). The parties were then afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence.

The parties both filed timely post-hearing briefs in support of their respective positions on or about August 15, 2014. However, in light of the Commonwealth's briefing of its Motion to Dismiss, which was raised at the conclusion of the June 16, 2014 hearing, I granted leave to Complainant to file an additional response, which was received on September 22, 2014. In addition, Complainant filed a Supplemental Brief in support of his position on October 6, 2014.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 9)
2. Daniel Angelucci is a public employe within the meaning of Section 301(2) of PERA. (N.T. 9)
3. Angelucci has been a parole agent with the PBPP in Philadelphia, Pennsylvania for 12 years. (N.T. 165)
4. On January 30, 2014, Catherine V. Goodman, the PBPP Deputy Director, sent Angelucci a Written Notice of Pre-Disciplinary Conference, which provided, in pertinent part, as follows:

Dear Mr. Angelucci:

This is to advise you that an investigation is presently being conducted into the following allegation(s) concerning your conduct as an employee of this organization:

Falsification of Commonwealth Records:

Specifically, it is alleged that you entered false and/or otherwise inaccurate information on PBPP-145 forms (i.e. Agents Daily Record of Activities), pertaining to your leave status and Paid Office Closing (POC) eligibility, submitted for December 24, 26 and 28, 2012. This is a violation of Section B.12.b of the PBPP Code of Conduct.

This is to advise you that a Pre-Disciplinary Conference (PDC) has been scheduled for Wednesday, February 5, 2014 at 9:30 a.m. at the Eastern Regional Office, 2630 N. 13th St., Suite 100, Philadelphia, PA. The purpose of the conference is to present you with an opportunity to respond to the allegation. The nature of the evidence in support to (sic) the allegation will be described to you at that time. You will be notified, in writing, as soon a (sic) possible as to whether disciplinary action will be taken.

Discipline may or may not be imposed, depending on the facts gathered during the investigation. Should you not attend this PDC, decisions concerning appropriate action that may be warranted will be made based upon the available information.

If you have questions concerning this matter, please contact the Labor Relations Division...

(Petitioner Exhibit 9) (Emphasis in original).

5. Angelucci subsequently attended the pre-disciplinary conference (PDC) in February 2014 and was suspended for one day on March 19, 2014. The notice of suspension indicated that his response to the allegation was not acceptable. (Petitioner Exhibit 8, p. 42-43; Commonwealth Exhibit 3)

DISCUSSION

In his charge, Angelucci alleged that the Commonwealth violated Section 1201(a) (1) through (9) of the Act¹ by issuing him a pre-disciplinary letter² on January 30, 2014 in retaliation for his protected activity. However, the refusal to bargain charge under Section 1201(a) (5) of the Act must be dismissed for lack of standing. As the Hearing Examiner noted in **James A. Confer v. Bellefonte Area School District**, 36 PPER 135 (Proposed Decision and Order, 2005), the Commonwealth owes its duty to bargain to the Union, and not to individual employees such as Angelucci. Indeed, it is well settled that individual employees such as Complainant lack standing to prosecute a refusal to bargain charge. *Id.* citing **Towamencin Township**, 29 PPER ¶ 29059 (Final Order, 1998).

¹Section 1201(a) of the Act provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization. (4) Discharge or otherwise discriminating against an employee because he has signed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. (6) Refusing to reduce a collective bargaining agreement to writing and sign such agreement. (7) Violating any of the rules and regulations established by the board regulating the conduct of representative elections. (8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX. (9) Refusing to comply with the requirements of 'meet and discuss.'" 43 P.S. § 1101.1201.

² As the Commonwealth points out, Angelucci did not amend his charge or file a new charge to allege that the pre-disciplinary letter or PDC ultimately led to a one-day suspension; thus, the one-day suspension is not at issue in this case.

Similarly, the charge under Section 1201(a) (4) of the Act must also be dismissed because Complainant did not prove or allege that he signed an affidavit, petition, or complaint with the Board, or gave any information or testimony before the Board, prior to his pre-disciplinary letter. **Bellefonte Area School District, supra**. Once again, as the Hearing Examiner in **Bellefonte Area School District** noted, Section 1201(a) (4) only addresses discrimination against an employee for activity before the Board, and does not concern alleged discrimination against an employee for union activity that does not involve the Board's processes. *Id.*

Likewise, the charge under Section 1201(a) (2) of the Act fails as a matter of law. The Board will find a violation of Section 1201(a) (2) where an employer creates a company union whose independence is subject to question because of managerial assistance to or involvement in it. **AFSCME District Council 88 v. Berks County Intermediate Unit**, 29 PPER ¶ 29098 (Proposed Decision and Order, 1998) citing **Montgomery County Intermediate Unit**, 17 PPER ¶ 17124 (Final Order, 1986). The allegations contained in the specification of charges are simply not sufficient to prove a violation of this Section. Nor did Complainant offer any evidence to establish a violation of Section 1201(a) (2). In the same vein, the allegations are also insufficient to prove a violation of Section 1201(a) (6) through (9). Complainant did not allege or offer evidence that the Commonwealth refused to sign a collective bargaining agreement, violated any Board rules with regard to an election, refused to comply with an arbitration award or the Act's "meet and discuss" requirements. As a result, the charges under Section 1201(a) (6) through (9) will also be dismissed.

With regard to his Section 1201(a) (3) discrimination claim, the Complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew the employee engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employee's involvement in protected activity. **Audie Davis v. Mercer County Regional Council of Government**, 45 PPER 108 (Proposed Decision and Order, 2014) citing **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981). Once a prima facie showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity. **Teamsters Local 776 v. Perry County**, 23 PPER ¶ 23201 (Final Order, 1992). If the employer offers such evidence, the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual. **Teamsters Local 429 v. Lebanon County**, 32 PPER ¶ 32006 (Final Order, 2000). The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the protected conduct. **Mercer County Regional COG, supra, citing Pennsylvania Federation of Teachers v. Temple University**, 23 PPER ¶ 23033 (Final Order, 1992).

In this case, the Complainant has failed to sustain his burden of proving a prima facie case of discrimination. In fact, the Complainant has not even shown that he engaged in protected activity. Although Complainant alleged in his charge that he is actively involved with the Union and employee issues and that he filed numerous grievances in the past, he did not offer any evidence to support these allegations. Indeed, the record is devoid of any substantial competent evidence to show that Complainant engaged in any activity protected by the Act prior to his pre-disciplinary letter on January 30, 2014.³ As the Commonwealth points out, three witnesses called by Angelucci, including Parole Supervisor Stanley Wilder, Deputy Catherine Goodman, and Human Resource Analyst Dino Perricone, each testified credibly that the pre-disciplinary letter was issued because the PBPP believed Angelucci had falsified or inaccurately reported information on his PBPP-145 forms in December 2012. (N.T. 86-89, 94, 106, 140, 146-149; Petitioner Exhibit 9). What is more, Angelucci readily conceded that he indicated "paid office closing" or "POC" on his 145 forms for three days in December 2012 to which he was not entitled

³The record does contain evidence of a grievance which Complainant filed protesting his March 2014 one-day suspension in Petitioner Exhibit 8. However, this occurred well after the January 2014 pre-disciplinary letter and could not possibly be the source of the alleged retaliation.

because he was off on personal leave. (N.T. 166-167, 169, 170-177, 181-183). And, the PBPP's Code of Conduct, Section 12.b requires that employes must be truthful and accurate in filing reports. (N.T. 170; Petitioner Exhibit 11). The falsification of reports or the submission of inaccurate information to one's employer is not protected activity under the Act. **Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police**, 41 PPER 171 (Proposed Decision and Order, 2010), PF-C-09-83-E (Final Order, May 17, 2011), *aff'd sub nom*, **Pennsylvania State Troopers Ass'n v. PLRB**, 39 A.3d 616 9Pa. Cmwlt. 2012). Therefore, the charge under Section 1201(a)(1) and (3) will also be dismissed.

Complainant maintains that the hearing should be continued to permit him to call a number of additional witnesses who were allegedly under subpoena to prove his case. However, the witnesses he identified at the hearing, and for which he provided an offer of proof, did not relate in any way whatsoever to any protected activity on Complainant's part. (N.T. 159-163). As a result, it is of no consequence whether these witnesses were properly served, as they could not have assisted Complainant in meeting the first element of the three-part conjunctive test for a Section 1201(a)(3) discrimination claim. Accordingly, the Complainant's request for a continuance is denied.

CONCLUSIONS

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

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA.
2. Daniel Angelucci is a public employe within the meaning of Section 301(2) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has not committed unfair practices in violation of Section 1201(a)(1) through (9) 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 of unfair practices 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of December, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner