

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case Nos. PERA-D-15-101-E
: PERA-D-16-106-E
: (PERA-R-777-C)
COMMONWEALTH OF PENNSYLVANIA :

PROPOSED ORDER OF DISMISSAL

On April 16, 2015, Daniel Angelucci filed a Petition for Decertification under the Public Employee Relations Act (PERA or Act) with the Pennsylvania Labor Relations Board (Board), alleging that thirty percent or more of certain employes of the Commonwealth of Pennsylvania (Commonwealth) no longer wish to be represented by the American Federation of State, County and Municipal Employees Council 13 (AFSCME)¹ and requesting that the Board schedule a hearing and order an election pursuant to Section 607 of PERA.² The Petition was accompanied by a showing of interest to support the contention that at least thirty percent of the eligible employes wished to decertify AFSCME as their bargaining representative.

On April 24, 2015, the Commonwealth submitted to the Board an employe list containing the names of 1516 employes in the certified unit. Based on the April 24, 2015 employe list submitted by the Commonwealth, it was determined that Petitioner Angelucci had failed to submit a thirty percent showing of interest as required by Section 607 of PERA. On April 28, 2015, the Board Secretary dismissed the Petition for Decertification because Petitioner Angelucci lacked the requisite showing of interest.

On May 18, 2015, Angelucci filed exceptions with the Board, alleging that the Commonwealth had submitted an inaccurate list of employes for use by the Board in checking his showing of interest. On August 18, 2015, the Board remanded the matter to the Secretary with direction to order a hearing, limited solely to the accuracy of the Commonwealth's list of employes.

On September 2, 2015, the Secretary issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference, and designating October 13, 2015, in Harrisburg, as the time and place of hearing, if necessary. On October 13, 2015, the hearing was continued to November 5, 2015 at the request of the Commonwealth and without objection from Angelucci or AFSCME. On October 30, 2015, I ordered that the matter be held in abeyance, pursuant to the Board's blocking charge policy, pending the disposition of Angelucci's unfair practices charge docketed at PERA-C-15-292-E.

On April 28, 2016, Keith Grube filed a Petition for Decertification with the Board, alleging that thirty percent or more of the employes in the unit no longer wish to be represented by AFSCME and requesting that the Board schedule a hearing and order an election pursuant to Section 607 of PERA. The Petition was accompanied by a showing of interest to support the contention that at least thirty percent of the eligible employes wished to decertify AFSCME as their bargaining representative.

On May 12, 2016, the Commonwealth submitted to the Board an employe list containing the names of 1524 employes in the certified unit. Based on the employe list submitted by the Commonwealth, it was determined that Petitioner Grube had failed to submit a thirty percent showing of interest as required by Section 607 of PERA. On May 16, 2016, the Board Secretary dismissed the Petition for Decertification because Petitioner Grube lacked the requisite showing of interest.

¹ On January 4, 1972, the Board certified AFSCME as the exclusive bargaining representative for all professional Inspection, Investigation and Safety Services employes.

² Section 607 of PERA provides that "[i]f there is a duly certified representative: (i) a public employe or a group of public employes may file a petition for decertification provided it is supported by a thirty percent showing of interest..." 43 P.S. § 1101.607.

On June 3, 2016, Grube filed exceptions with the Board, alleging that the Commonwealth had submitted an inaccurate list of employees for use by the Board in checking his showing of interest. On August 16, 2016, the Board remanded the matter to the Secretary with direction to order a hearing, limited solely to the accuracy of the Commonwealth's list of employees.

On August 30, 2016, the Secretary issued an Order and Notice of Hearing, designating September 23, 2016, in Harrisburg, as the time and place of hearing, if necessary. The hearing was continued multiple times without objection by any of the parties and eventually consolidated with the pending Decertification Petition docketed at PERA-D-15-101-E.³ On February 3, 2017, the Commonwealth filed a motion to dismiss the decertification petition in PERA-D-15-101-E, alleging that the actual Petitioner was the International Professional Employees Union, which lacked standing to file such a petition. On February 7, 2017, AFSCME filed a response, essentially joining in the Commonwealth's motion. On February 10, 2017, Petitioner Angelucci filed a response to the motion, opposing the dismissal of the petition and essentially denying that the petition was filed by the International Professional Employees Union.⁴

A hearing was necessary and was held before the undersigned Hearing Examiner of the Board on February 23, 2017, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. Petitioners Angelucci and Grube each filed post-hearing briefs in support of their positions on May 30, 2017. AFSCME and the Commonwealth both filed briefs in support of their respective positions on June 9, 2017.

The Hearing 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. 5)
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5)
3. Keith Grube is a public employe within the meaning of Section 301(2) of PERA. (N.T. 5)
4. Daniel Angelucci was a public employe within the meaning of Section 301(2) of PERA prior to his separation from employment in October 2015. (N.T. 5)
5. John Gasdaska has been the Director of the Bureau of Labor Relations in the Commonwealth's Office of Administration for nine years. In this position, Gasdaska is responsible for administering the Commonwealth's labor relations program with the 20 unions, which represent Commonwealth employes. This involves negotiating contracts and memoranda of understanding, administering the grievance procedures, and responding to the Board's requests for employe lists in various representation proceedings. (N.T. 57-58)
6. Gasdaska received an "Acknowledgement and Notice of Filing of Petition" from the Board in PERA-D-15-101-E, dated April 21, 2015, which stated, in relevant part, that "[t]he employer should immediately furnish to the Board an alphabetized list of employes on the payroll immediately prior to the filing date of the Petition. Said payroll list

³ On February 1, 2017, I notified the parties that, due to the resolution of the charge docketed at PERA-C-15-292-E, the pending decertification petition in PERA-D-15-101-E would proceed and be consolidated with the decertification petition in PERA-D-16-106-E for hearing purposes. I also conducted a pre-hearing conference at the request of Petitioner Grube on February 2, 2017, which did not resolve any of the contested issues.

⁴ AFSCME filed a reply to Angelucci's response on February 13, 2017.

shall include all employees in the unit suggested as appropriate in the Petition.” (N.T. 60-61; AFSCME Exhibit 10)

7. Upon receiving the Board’s Acknowledgement and Notice of Filing of Petition in 2015, Gasdaska reached out to the Commonwealth’s computer systems employees in the Human Resources Service Center to generate a list of the employees in the unit as of the date in question. Once he received the list, he reviewed it to make sure it was the correct bargaining unit and then forwarded the list to the Board. He did not make any changes to the list. (N.T. 61-62; Commonwealth Exhibit 1)⁵

8. Gasdaska also received an “Acknowledgement and Notice of Filing of Petition” from the Board in PERA-D-16-106-E on or about April 29, 2016, which stated, in relevant part, that “[t]he employer should immediately furnish to the Board an alphabetized list of employees on the payroll immediately prior to the filing date of the Petition. Said payroll list shall include all employees in the unit suggested as appropriate in the Petition.”⁶ (N.T. 63; AFSCME Exhibit 11)

9. Upon receiving the Board’s Acknowledgement and Notice of Filing of Petition in 2016, Gasdaska once again reached out to the Commonwealth’s computer systems employees in the Human Resources Service Center to generate a list of the employees in the unit as of the date in question. Once he received the list, he reviewed it to make sure it was the correct bargaining unit and then forwarded the list to the Board. He did not make any changes to the list. (N.T. 61-64; Commonwealth Exhibit 2)

DISCUSSION

Petitioners Angelucci and Grube contend that the Commonwealth submitted an inaccurate list for use by the Board in checking their respective showings of interest offered in support of each decertification petition. However, the record shows that the Commonwealth submitted an accurate list to the Board in both the 2015 and 2016 petitions. Indeed, I have credited the testimony of Gasdaska, who described the process he followed in obtaining the list and forwarding it to the Board in both cases, and find that the method utilized by Gasdaska would be an accurate method of obtaining the list of employees in the bargaining unit relative to the particular dates in question. The record does not show that the list in either petition includes the name(s) of any other employee who was not in the unit or on the payroll immediately prior to the filing date of the petitions. As a result, Petitioners Angelucci and Grube have not demonstrated the requisite showing of interest as defined in the Act. See **Pennsylvania Dept. of Corrections**, 21 PPER ¶ 21078 (Proposed Order of Dismissal, 1990). Accordingly, the petitions must be dismissed.

Petitioners submit that the Board should be transparent and reveal how many bargaining unit members there are and how many of them signed authorization cards. However, the Petitioners should be well aware of how many unit members there are based on the lists submitted by the Commonwealth to the Board in each petition for use in checking the respective showings of interest. Indeed, the Petitioners have attacked the accuracy of those lists in each petition, which is the very issue being litigated in the instant matter. Moreover, as AFSCME points out, the Petitioners should also be well aware of which employees signed authorization cards that constitute their showing of interest because the Petitioners gathered those cards and submitted them to the Board. Likewise, the Petitioners should know which employees’ names were on the lists submitted by the Commonwealth to the Board, since they received copies of the lists with the Board’s remand orders in each case.

⁵ Gasdaska also forwarded a separate list which included 152 employees from a unit in the Attorney General’s office at that time because the Commonwealth does coalition bargaining with the independent state agencies relative to the AFSCME contract. He testified that he was initially unsure whether he should include those employees from the AG’s office. However, he subsequently learned that those employees are not included in the unit. (N.T. 63-68, 79; Commonwealth Exhibit 1, 2). The list utilized by the Board in checking the sufficiency of the showing of interest for the 2015 petition did not include employees from the Attorney General’s office.

⁶ The Acknowledgement and Notice of Filing of Petition is actually dated April 29, 2015. However, this is an obvious typographical error in that the petition in PERA-D-16-101-E was not even filed until April 28, 2016. Thus, the 2016 date corresponds to when the Board typically issues the Acknowledgement and Notice of Filing of Petition. (N.T. 67-68).

In any event, the Board's Rules and Regulations, set forth at Section 95.1, define the term "showing of interest" as follows:

A designated percentage of public employes in an allegedly appropriate bargaining unit, or a bargaining unit determined to be appropriate, who are members of an employe organization, who have designated it as their exclusive bargaining representative, or who have signed a petition requesting an election for certification or decertification of public employe representatives. The designations shall consist of written authorization cards or petitions, **signed by employes and dated**, authorizing an employe organization to represent the employes for the purpose of collective bargaining or requesting an election for certification or decertification of public employe representatives, current dues records or other evidence approved by the Board.

34 Pa. Code § 95.1. (Emphasis added).

The Board has a longstanding policy of dismissing petitions which are supported by a showing of interest consisting of copies of the signatures of the employes in the bargaining unit. **In the Matter of Employes of Neshannock Township School District**, 17 PPER ¶ 17153 (Final Order, 1986). In this matter, Petitioners Angelucci and Grube have submitted, as part of their respective showing of interest, scores of invalid authorization cards. Indeed, there are dozens of authorization cards with respect to both the 2015 and 2016 petitions, which are either lacking an original signature or any signature at all, contain no date, belong to employes who are not on the list, or are duplicative. As such, these invalid authorization cards cannot be used to support the showing of interest in either petition. Therefore, the showing of interest for both the 2015 and 2016 petitions fall well short of the threshold thirty percent statutory requirement.⁷

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. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.
3. Keith Grube is a public employe within the meaning of Section 301(2) of PERA.
4. Daniel Angelucci was a public employe within the meaning of Section 301(2) of PERA prior to his separation from employment in October 2015.
5. The Board has jurisdiction over the parties.
6. The Petitioners Angelucci and Grube have not demonstrated the requisite showing of interest as defined in the Act for the 2015 and 2016 decertification petitions.

ORDER

⁷ At the hearing, AFSCME made a motion to dismiss the 2015 petition based on an allegation that the showing of interest was obtained through misrepresentation. (N.T. 53-54). Based on my determination that the showing of interest did not meet the thirty percent threshold set forth in the Act for both the 2015 and 2016 petitions, it is not necessary to reach this question or the Commonwealth's averment that the actual petitioner in the 2015 matter lacked standing to file the petition.

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

HEREBY ORDERS AND DIRECTS

that the Petitions in PERA-D-15-101-E and PERA-D-16-106-E are dismissed.

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 29th day of June, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner