

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME LOCAL 2719 :  
 :  
 : CASE NO. PERA-C-18-75-W  
 v. :  
 :  
 PITTSBURGH PARKING AUTHORITY :  
 :

**PROPOSED DECISION AND ORDER**

On April 4, 2018, American Federation of State, County and Municipal Employees Local 2719 (AFSCME or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Pittsburgh Parking Authority (Authority or Employer) violated Section 1201(a)(4) and (5) of the Public Employee Relations Act (PERA).

On May 16, 2018, the Secretary of the Board issued a complaint and notice of hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating September 24, 2018, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing was held on September 24, 2018, in Pittsburgh, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Authority filed a post-hearing brief on December 31, 2018. The Union declined to file a post-hearing brief.

The Hearing Examiner, based upon all matters of record, makes the following:

**FINDINGS OF FACT**

1. The Authority is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 116).
3. Shawn Beck is the Union Steward. He has been Steward for approximately eight years. He has been an employe of the Authority for approximately eighteen years. (N.T. 31-32).
4. John Fournier was the Director of Enforcement for the Authority. Fournier was the Authority employe responsible for administering second stage grievances and was also responsible for investigating incidents which may result in discipline of employes. (N.T. 118-119).
5. In early 2018, Gabriel Espinosa, a Latino Parking Enforcement Officer, filed an internal complaint of discrimination

against Beck. Espinosa alleged that Beck was discriminating against him by issuing parking tickets on Espinosa's vehicle because of Espinosa's ethnicity. Fournier was responsible for handling the complaint. (N.T. 119-120).

6. On or about February 21, 2018, Fournier notified Beck of Espinosa's complaint. (N.T. 120).

7. In early March 2018, Fournier met with Beck to investigate Espinosa's complaint of racial discrimination. During the meeting, Fournier told Beck about the complaint, asked Beck some basic questions about Beck's relationship with Espinosa, explained to Beck the process that Fournier would undertake, and informed Beck that he would provide Beck a written report of his findings at the conclusion of the investigation. (N.T. 121-122).

8. Beck testified at the hearing that during this March, 2018, meeting, Fournier told Beck that he was going to get Beck and that he was going to fire Beck. Beck testified that said in response that he would file a charge if he was fired. Beck testified that Fournier said he would fire Beck if he filed a charge. (N.T. 67-72).

9. Fournier testified at the hearing that the conversation alleged by Beck never happened and that he never threatened Beck and that he never told Beck he was going to get him for filing a charge. (N.T. 128-129).

10. On April 4, 2018, Fournier met with Beck again and gave Beck a written report regarding Espinosa's complaint. The report concluded that Beck had not discriminated against Espinosa but that he had inappropriately targeted Espinosa's car for ticketing. Beck was issued a two-day unpaid suspension. (N.T. 125-126).

#### **DISCUSSION**

The Union in this matter filed a charge primarily focused on the Authority's alleged failure to process numerous grievances. The Union withdrew its charge with respect to these grievances at the hearing. (N.T. 116). However, the Union did not withdraw its charge with respect to alleged unlawful discrimination by the Authority pursuant to Section 1201(a)(4). In its Specification of Charges, the Union alleges: "Please be advised that the Director of Parking Enforcement, John Fournier, threatened Shawn Beck (union steward) with discharge should [Beck] file a ULP which [Beck] told [Fournier] [Beck] would be obliged to do."

The Union in this matter has the burden of proving its charge. Lancaster County v. PLRB, 633 Pa. 294 (2015).

Section 1201(a)(4) of the Act provides that "discharging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act" is an unfair practice. A review of the record in this regard fails to show any discharge or other discrimination against Beck for signing or filing an affidavit, petition or complaint or giving any information or testimony under this Act. Crucially, the alleged threat by Fournier that Beck complains of

occurred prior to the filing of the charge in this matter. The Union did not produce evidence of any other relevant affidavit, petition, complaint, information or testimony to which the alleged discrimination by the Authority could have been connected. Additionally, I credit Fournier's testimony over Beck's and find that the alleged threat by Fournier to fire Beck never occurred. Therefore, the Union in this matter has not meet its burden of proving a *prima facie* case under section 1201(a)(4) and the charge will be dismissed.

#### **CONCLUSIONS**

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

1. The Authority 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. The Board has jurisdiction over the parties hereto.
4. The Authority has not committed unfair practices in violation of Section 1201(a)(4) 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 rescinded.

#### **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** at Harrisburg, Pennsylvania, this twenty-seventh day of March, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner