

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

SEIU LOCAL 668 PSSU :  
 :  
 v. : Case No. PERA-C-18-110-E  
 :  
 LACKAWANNA COUNTY :

**PROPOSED DECISION AND ORDER**

On May 9, 2018, the Service Employees International Union Local 668 (SEIU or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Lackawanna County (County or Employer), alleging that the County violated Section 1201(a)(1) of the Public Employee Relations Act (PERA or Act) by denying Paula Welsh and Paula Yale their Weingarten rights<sup>1</sup> to proper Union representation during investigatory meetings which ultimately led to their discharge.

On May 22, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on July 23, 2018, if necessary. The hearing ensued as scheduled on July 23, 2018, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed a post-hearing brief on October 9, 2018. The County filed a post-hearing brief on October 15, 2018.

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. Lackawanna County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)
2. SEIU is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. SEIU is the exclusive bargaining representative for a unit of employes at the County which includes the Area Agency on Aging (AAA). (Union Exhibit 1)
4. SEIU and the County were parties to a collective bargaining agreement (CBA), which was effective from January 1, 2013 to December 31, 2016, and which provided for automatic yearly renewals thereafter. (Union Exhibit 1)
5. Article 23 of the CBA, which is entitled "Discipline," provides in relevant part in Section 1 as follows:

An Employee who is suspended, demoted, or discharged while on duty shall be given a written notice stating the reason for the action within three (3) days thereafter. In case of suspension or discharge the Employee shall be advised that he/she has a right to have his/her steward present; and if he/she so requests,

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<sup>1</sup> NLRB v. Weingarten, 420 U.S. 251, 95 S.Ct. 959 (1975).

shall be promptly granted an interview with his/her steward before he/she is required to leave the premises.

(Union Exhibit 1)

6. In January 2018, Paula Welsh was employed at the County AAA as a protective services investigator. (N.T. 12)

7. In January 2018, Paula Yale was also employed at the County AAA. (N.T. 41-42)<sup>2</sup>

8. On January 9, 2018, the County AAA Director Jason Kavulich and Human Resources Director Justin MacGregor received an allegation of harassment and stalking, in which AAA employes were targeting coworker Lucy Jerzowski by circulating pictures of her home and personal vehicle. (N.T. 77-80)

9. The County immediately began an investigation on January 9, 2010 by interviewing the alleged victim, Jerzowski, as well as another coworker. (N.T. 77-80)

10. As part of the investigation, the County conducted separate investigatory interviews of Welsh and Yale on January 10, 2018. The County asked Union member Kelly Harrity to serve as Union representative during the interviews. Harrity has served as a contract negotiator for SEIU. (N.T. 13-16, 21-24, 27, 53, 79-81)

11. Welsh and Yale never raised any objections during their interviews regarding the qualifications of the Union representative, nor did either one of them make a request for a different Union representative. (N.T. 17, 45, 79-81)

12. On January 16, 2018, the County had a brief meeting with Welsh, during which MacGregor advised that Welsh was being placed on paid administrative leave. Union member Lauren Fitzgerald was present for the meeting. Fitzgerald has served as a contract negotiator for SEIU. The County did not ask Welsh any questions during the January 16, 2018 meeting, and Welsh did not raise any objections regarding her Union representation. (N.T. 21-22, 27, 31-32, 81-82, 91)

13. On January 16, 2018, the County also had a brief meeting with Yale, during which Yale objected to Fitzgerald serving as her Union representative and specifically asked for a different representative. MacGregor denied her request, stating "you don't need one for this." The County did not ask Yale any questions during the meeting. The County advised Yale that she was being placed on paid administrative leave. (N.T. 46-50, 56, 81-82, 91)

14. The County ultimately discharged Welsh and Yale following due process hearings for each employe in February 2018. (N.T. 12, 42)

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<sup>2</sup> It is unclear from the record what position Yale held.

## DISCUSSION

In its charge, SEIU alleged that the County violated Section 1201(a)(1) of the Act<sup>3</sup> by denying Paula Welsh and Paula Yale their Weingarten rights to proper Union representation during investigatory meetings which ultimately led to their discharge. The County contends that the charge should be dismissed because the County did not violate the Weingarten rights of Welsh or Yale, as the County provided each employe with Union representation, to which neither employe objected during the investigatory interviews.

It is well settled that the Weingarten right of an individual employe, that is, the right to obtain a representative to accompany the employe during an investigatory interview when the employe reasonably fears that discipline may be imposed by the employer, includes the right to have the union representative of his or her choice, if the assisting union representative is reasonably available and absent extenuating circumstances. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 916 A.2d 541, 551 (Pa. 2007). The right only arises, however, when the employe requests representation. City of Reading v. PLRB, 689 A.2d 990 (Pa. Cmwlth. 1997); Plouffe v. SSHE, Kutztown University, F. Javier Cevallos et. al, 41 PPER 63 (Proposed Decision and Order, 2010), 41 PPER 82 (Final Order, 2010). Further, an employe does not have a right to union representation in a non-investigatory meeting called by the employer to inform the employe of a disciplinary decision that has already been made. AFSCME District Council 85, AFL-CIO v. Pennsylvania Fish Commission, 18 PPER ¶ 18030 (Final Order, 1986).

In this case, the Union has not sustained its burden of proving the County violated the Act. Indeed, the record clearly shows neither Welsh nor Yale specifically objected to Harrity serving as their Union representative during the investigatory interviews on January 10, 2018. Nor did Welsh or Yale request a different Union representative for their interviews on January 10, 2018. In addition, although Yale objected to Fitzgerald serving as her Union representative on January 16, 2018 and requested a different Union representative for that meeting, the record shows that the meetings for both Welsh and Yale on January 16, 2018 were not investigatory in nature. In fact, the County did not ask any questions of either Welsh or Yale during that meeting, and instead, simply informed each of them of its decision to place them on paid administrative leave. As a result, the charge under Section 1201(a)(1) of the Act must be dismissed.<sup>4</sup>

## CONCLUSIONS

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

1. The County is a public employer under Section 301(1) of PERA.
2. SEIU is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.

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<sup>3</sup> Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act... 43 P.S. § 1101.1201.

<sup>4</sup> The Union has neither alleged nor argued that the County repudiated the CBA in violation of Section 1201(a)(5) of the Act.

4. The County has not committed unfair practices in violation of Section 1201(a)(1) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA the 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 27<sup>th</sup> day of February, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner