

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED FOOD AND COMMERCIAL WORKERS :
UNION, LOCAL 1776 KEYSTONE STATE :
 : CASE NO. PERA-C-20-25-E
 v. :
 :
BOROUGH OF DUNMORE :
 :

PROPOSED DECISION AND ORDER

On January 29, 2020, United Food and Commercial Workers Union, Local 1776 Keystone State (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Borough of Dunmore (Borough or Employer) violated Section 1201(a)(1) of the Public Employee Relations Act (PERA or Act).

On February 28, 2020, the Secretary of the Board issued a complaint and notice of hearing designating May 4, 2020, in Harrisburg, as the time and place of hearing.

The hearing was continued and held virtually on August 19, 2020, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed its post-hearing brief on October 19, 2020. The Employer filed its post-hearing brief on December 10, 2020.

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

FINDINGS OF FACT

1. The Borough is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6-7).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7).
3. Sally Judge has been a Borough employe for twenty-five years. She has been the Accounts Payable/Receivable Clerk since 2014. She is active in the Union and has been the Union Steward since the creation of the Union in 2006. (N.T. 12-14).
4. Vito Ruggiero is the Borough Manager or Municipal Administrator. He is Judge's supervisor. (N.T. 14).
5. On January 8, 2020, Judge, on behalf of the Union as Steward, filed a grievance regarding the transfer of a bargaining unit position to the Police Department. The grievance states: "A member of the Bargaining Unit was offered a permanent raise with no explanations as to why. The Union was not notified and it was not discussed." (N.T. 14-17; Union Exhibit 1).

6. On January 15, 2020, the Borough responded to the grievance filed by Judge with a letter from Ruggiero. Ruggiero wrote the letter to, in part, inform Borough Council on what he thought they should know about Judge's grievance. The letter states in relevant part:

RE: Response to 1/8/20 Grievance. . .

Dear Ms. Judge

Your above-referenced grievance is denied. It 1) is not clear or comprehensible on its face; 2) fails to identify the specific action alleged to be a violation, or the date of its first occurrence (and any continuation); 3) fails to identify the specific contract article(s)/section(s) alleged to have been violated; and 4) fails to identify the relief requested, if any. For each and all of those reasons your grievance is not valid, and no further action is required by the Borough.

Separately, and without waiving any other defenses, including but not limited to timeliness, your grievance is denied on the merits. Under Article 16 of our CBA the Borough retains and has the managerial right to manage its operations, and its bargaining unit employees. Nothing in the Wage article of the CBA (Article 8) or in any other article or section precludes the Borough from increasing wages of a bargaining unit employee so long as the revised wage is consistent with - i.e., within - the applicable structure set forth in that article.

Finally, in considering what I *believe* to be the import of your grievance, I note its intrinsic incongruity and inconsistency with your acceptance of over \$6,000 which the Borough gratuitously, and needlessly, paid to you over the last several months for performing tasks within the range of your job responsibilities, and for which no additional pay was required. By this response I am bringing that anomalous situation to the attention of Borough Council, which will need to determine what action, if any, it will take on it - prospectively and/or retroactively.

Sincerely

Vito P. Ruggiero.

(N.T. 17-18, 86; Union Exhibit 2) (emphasis in original).

7. On January 16, 2020, in response to Ruggiero's letter, Judge sent an email to the seven members of the Borough Council. Judge's email states in relevant part:

Good Morning. Attached please find a response from a grievance that was filed with the Borough for an employee in the Clerical Union getting a 7,000 raise with no explanation to the Union as to why, when a 10,000 increase in salary was given back in 2018 to the same employee. As we state before, we do not begrudge anyone a raise but to be fair to everyone else.

As everyone knows, Jean Hill and I have been doing the Treasurer's responsibilities since May 2019. The Treasurer's job, as you all know, comes with a lot of responsibility and Jean and I were offered it with a stipend. This was **temporary** and is **NOT** an increase in our salary, because tomorrow our salary will go back to what it originally was. I want everyone to understand that we were doing our jobs along with another job for months. We made sure everything was done and there were no complaints from anyone. The Borough ran smoothly. . . .

We would like to address all 7 Council members regarding this email so that we can discuss the threat that was given to us in our grievance that there maybe be prospectively and/or retroactively action against us.

(N.T. 36; Union Exhibit 5) (emphasis in original).

DISCUSSION

The Union has alleged an independent violation of Section 1201(a)(1). Section 1201(a)(1) prohibits an employer from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this Act." 43 P.S. §1101.1201(a)(1). An employer commits an independent violation of Section 1201(a)(1) "where in light of the totality of the circumstances the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Under this standard, the complainant does not have to show improper motive or that any employes have in fact been coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985); Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order, 2004). 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). However, 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).

The record in this matter is clear that Ruggiero's letter to Judge would, in light of the totality of the circumstances, coerce a reasonable employe in the exercise of protected rights. In this matter, Judge, the Union Steward, exercised protected rights: she filed a grievance. The letter to Judge by Ruggiero is manifestly in response to her filing a grievance. The subject line of the letter is "Response to Grievance". The first two paragraphs of the letter properly discuss the Borough's response to Judge's grievance. However, the Borough included the third paragraph to the letter, which contains the unfair practice.

The third paragraph of the letter would coerce a reasonable employe because it threatens Judge with economic reprisal. Ruggiero, who is Judge's supervisor, states that Judge has "needlessly" been paid \$6,000.00 and that he was going to bring this "anomalous" situation to the attention of the Borough Council for a determination on what action to take, including, threateningly, "retroactive" action. I find a reasonable employe would read this letter as saying the Borough's response to Judge filing a grievance was that the Borough was going to consider reducing her pay and even possibly demand previous payments made to her be returned to the Borough. The letter says, in essence: our response to your grievance is that you may suffer financially. I find that this action by the Borough would have the tendency to coerce employes from filing grievances. I base this finding on the totality of the record and note that Judge, soon after receiving the letter from Ruggiero, wrote a letter to Borough Council defending herself (and another employe) from the claims in Ruggiero's letter and stating that she viewed Ruggiero's letter to be an explicit threat of prospective and retroactive action.

I find that that the coercive effect of the third paragraph of Ruggiero's letter far outweighs any legitimate basis it may have. Ruggiero could have expressed his opinion to Borough Council in any number of ways without framing his concerns as an economic threat to Judge immediately after, and in the context of, her exercise of protected rights. Specifically, Ruggiero's characterization of Judge's payments as "needless" and the threat to retroactively recoup payments in a letter to Judge in response to a grievance goes far beyond any obligation to inform Borough Council. Ruggiero may of course inform Borough Council of his views, but if he expresses them like he did in this case, they are nonetheless an independent violation of Section 1201(a)(1).

CONCLUSIONS

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

1. The Borough of Dunmore 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 Borough of Dunmore has 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 the Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Borough of Dunmore shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Take the following affirmative action:

(a) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(b) 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; and

(c) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 fifth day of January, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The Borough of Dunmore hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) of the Public Employee Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public