

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JEANETTE M. POLIZZI

:
:
:
:
:
:
:

v.

CASE NO. PERA-C-13-256-E

LEHIGH CARBON COMMUNITY COLLEGE

FINAL ORDER

Jeanette M. Polizzi filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 20, 2015, to a Proposed Decision and Order (PDO) issued on November 2, 2015, in which the Hearing Examiner dismissed her Charge of Unfair Practices alleging that the Lehigh Carbon Community College (College) violated Section 1201(a)(1) and (4) of the Public Employee Relations Act (PERA). Following an extension of time granted by the Secretary of the Board, the College filed a response to the exceptions on January 15, 2016. In the PDO, the Hearing Examiner made Findings of Fact, which for purposes of the exceptions, are summarized as follows.

A few days before the 2013 Memorial Day weekend, the College became aware of an impending 23 percent reduction in federal funds for the 2013-2014 school year, which was the largest decrease in funding the College had ever received. As a result of that loss of funding, the College began to consider reductions in staff as early as May 24, 2013, when Peggy Heim, Dean of Student Development, sent Barry Spriggs, Dean of Academic Services, an email with a draft budget for the College, in which certain employe hours were reduced, including reducing Polizzi from a 12-month employe to a 10-month employe.

Thereafter, Polizzi filed a charge of unfair practices with the Board on June 3, 2013, docketed at Case No. PERA-C-13-127-E, in which she alleged that the College violated Section 1201(a)(1), (5), and (6) of PERA. That charge alleged that as a result of Polizzi's acceptance of a position in the College's Perkins Grant program in 2009, the College failed to pay her the appropriate salary under the parties' collective bargaining agreement and directly dealt with members of the bargaining unit.¹

After Polizzi's charge of unfair practices was filed, Thomas Leamer, who was the Vice President of Academic Services and Student Development, voted to approve the College's proposed budget in an email dated June 6, 2013. Although several drafts of the budget were introduced in evidence, the approved budget, dated June 11, 2013, retained the original May 2013 proposals to reduce the hours for certain employes, including the change in Polizzi's position from 12-months to 10-months for the 2013-2014 school year.

On October 11, 2013, Polizzi filed the Charge of Unfair Practices in this case alleging that the College violated Section 1201(a)(1) and (4) of PERA by reducing her to a 10-month employe with a corresponding salary reduction in retaliation for the filing of the prior charge of unfair practices in June 2013.

Based on the testimony and evidence presented by the parties, the Hearing Examiner found and concluded as follows:

[T]he record shows that the College had an adequate explanation for reducing the Complainant's salary. The College's witnesses testified consistently that their goal in creating the 2013-2014 budget was to maintain services for students. (N.T. 121-123; Dep.Tr. 14-15). I find this testimony to be credible and persuasive. For the 2013-2014 school year, the College experienced a 23 percent reduction in federal funds, which was the largest decrease the College had ever received. Notably, the Complainant was not the

¹ Following her acceptance of the position in 2009, Polizzi challenged the salary she received through the grievance process, proceeded to arbitration, and was unsuccessful. In 2011, Polizzi once again grieved her salary for the 2009-2010 school year, and by an award issued on May 2, 2013, was again unsuccessful in establishing a contract violation.

only person within the program to take a reduction. (N.T. 101-102). The Complainant may not agree with the College's decision to reduce personnel rather than student services, but such a choice is hardly evidence of unlawful motivation, especially in light of the fact that the genesis of the conduct predated the Complainant's protected activity and that the three administrators who made the budget decisions for the Perkins program had no knowledge of the protected activity. Accordingly, the Complainant's charge of unfair practices under Section 1201(a)(4) must be dismissed.

* * *

In this matter, the College has not committed any violation of Section 1201(a)(4) of the Act, as alleged by Complainant. Therefore, the College has not committed a derivative violation of Section 1201(a)(1). Further, the Complainant has not alleged an independent violation of Section 1201(a)(1) in her charge of unfair practices. As such, the charge under Section 1201(a)(1) will also be dismissed.

(PDO at 4 -5).

In her exceptions to the PDO, Polizzi argues that the Hearing Examiner erred in failing to conclude that she had established a *prima facie* case of discrimination under Section 1201(a)(4) of PERA. In this regard, Polizzi claims that the Hearing Examiner erred in accepting the College's explanation for its reduction in Polizzi's position from 12-months to 10-months, despite her evidence offered to establish that the College's reasons were pretextual.

Section 1201(a)(4) of PERA provides that it shall be an unfair practice for an employer to discriminate against an employee because the employee has "signed or filed an affidavit, petition or complaint or given any information or testimony under this act." To establish a *prima facie* case of discrimination under Section 1201(a)(4) of PERA, the complainant has the burden of establishing: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew that the employee engaged in protected activity; and (3) that the employer engaged in conduct that was motivated by the employee's involvement in protected activity. **Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff**, 32 PPER ¶ 32006 (Final Order, 2000); **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). Substantial credible evidence establishing a reasonable inference of an unlawful motive on the part of the employer is required for a *prima facie* case of discrimination. **PLRB v. Ficon**, 434 Pa. 383, 254 A.2d 3 (1969); **Indiana Area Education Association v. Indiana Area School District**, 34 PPER 133 (Final Order, 2003).²

In determining the employer's motive, it is the function of the Hearing Examiner to weigh the evidence and make relevant findings of fact and conclusions based on credibility determinations. **Indiana Area School District, supra**. Because the Hearing Examiner is present to observe the witnesses, the Board will not disturb the Hearing Examiner's credibility determinations absent the most compelling of circumstances. **Avonworth Education Association v. Avonworth School District**, 35 PPER 136 (Final Order, 2004).

Here, the Hearing Examiner rejected the testimony and evidence offered by Polizzi to show that the motive for the College's reduction in her salary from a 12-month to a 10-month position was in retaliation for her filing of the charge of unfair practices with the Board. In support of the credibility determinations, the Hearing Examiner noted that Polizzi was not the only employee affected by reductions in the College's budget. (FF 9). The Hearing Examiner's Finding of Fact is supported by the testimony of Linda Mesics, Director of Academic Grants, who affirmatively responded when asked whether "there were other people in that June 11 budget who had reductions in salary and benefits in addition

² Contrary to the argument advanced by Polizzi on exceptions, it is only after the complainant establishes a discriminatory motive on the part of the employer that the burden then shifts to the employer to show a secondary legitimate business reason for its actions. **Indiana Area School District, supra.**, **Wright Line**, 251 NLRB 1083 (1980).

to just Ms. Polizzi..." (N.T. 101). The testimony of Mesics is corroborated by then Dean of Academic Services Barry Spriggs, who also testified that there were reductions elsewhere in the budget other than those affecting Polizzi. (N.T. 132).

Further, in rejecting an inference of union animus, the Hearing Examiner accepted the College's assertion that its budget proposals favored providing student services over reductions in personnel. This credibility determination is also supported by the testimony of Mesics, who indicated that even under her budget suggestions to the College administrators, cuts would have been necessary to certain student services to restore Polizzi to a 12-month position. (N.T. 82; Deposition of Dr. Leamer at 15). In addition, the Hearing Examiner accepted the evidence and testimony that the College's decision to reduce Polizzi's position to 10 months originated in May 2013, predating her June 2013 filing of the unfair practice charge. The College administrators responsible for the final budget determination also credibly testified that they had no knowledge of Polizzi's charge of unfair practices before they approved the budget on June 11, 2013, and mailed it to the Department of Education on July 15, 2013. (N.T. 138, 150, Deposition of Dr. Leamer at 19).

After a thorough review of the exceptions and all matters of record, there are no compelling reasons warranting reversal of the Hearing Examiner's credibility determinations or his finding that Polizzi failed to establish that the College harbored an unlawful retaliatory motive for reducing her position from 12-months to 10-months for the 2013-2014 school year. As such, the Hearing Examiner did not err in concluding that Polizzi failed to sustain her burden of proving a *prima facie* case of discrimination, and thus, did not err in dismissing her charge of unfair practices filed under Section 1201(a)(1) and (4) of PERA.³ Accordingly, the exceptions filed by Polizzi shall be dismissed, and the November 2, 2015 PDO made final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Jeanette M. Polizzi are hereby dismissed, and the November 2, 2015 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this fifteenth day of March, 2016. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

³ On exceptions, Polizzi does not challenge the Hearing Examiner's dismissal of her claim under Section 1201(a)(1) of PERA. See 34 Pa. Code §95.98(a)(3) ("[a]n exception not specifically raised shall be waived").