

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 776 :  
 :  
 v. : Case No. PERA-C-23-207-E  
 :  
 ADAMS COUNTY :

**FINAL ORDER**

Teamsters Local Union No. 776 (Teamsters) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on January 29, 2024, to a Proposed Decision and Order (PDO) issued on January 10, 2024. The Union excepts to the Hearing Examiner's conclusion that Adams County (County) did not materially assist bargaining unit member Julie Markle with a decertification petition filed with the Board at Case No. PERA-D-23-186-E, in violation of Section 1201(a)(1) of the Public Employe Relations Act (PERA). Following an extension of time granted by the Secretary of the Board, Teamsters filed a brief in support of exceptions on February 29, 2024. The County filed a brief in opposition to the exceptions on March 20, 2024.

The facts as found credible by the Hearing Examiner, and which are relevant to the disposition of the exceptions, are summarized as follows. Julie Markle is a County Administrative Assistant in a District Magistrate's office, and member of the court-appointed bargaining unit certified by the Board at Case No. PERA-R-08-79-E. Ms. Markle had previously collected signatures from co-workers in an attempt to decertify Teamsters while the prior collective bargaining agreement (CBA) was in effect from January 1, 2020 to December 31, 2023. (FF 4, 5). At that time, Ms. Markle contacted the PLRB and learned that she could not file a decertification petition outside of the sixty-to-ninety day window period under Section 605(7)(ii) of PERA. (FF 5).

During the final year of the CBA, Ms. Markle sent a letter to Court Administrator Don Fennimore asking if bargaining unit employees in the magisterial district offices could exit the bargaining unit. (FF 7). Ms. Markle's March 27, 2023 letter states as follows:

The District Court Offices, more specifically as listed in the union contract, Magistrates' Offices, (to include Clerks and Administrative Assistants) have determined unanimously, that we would like to exit the Teamsters Local Union 776. We do not feel that the Union benefits our offices based on the following facts.

1. Insurance premiums are higher per pay period than Non-Union Employees.
2. The annual raises, specifically this year, are considerably lower than Non-Union Employees.
3. We do not go out of town overnight for seminars or training, therefore, there is no need for meal allowances etc.

4. There is little or no room for advancement within our department as it is in larger staffed departments i.e. Probation and Domestic Relations. More specifically (but not limited to), the position of Administrative Assistant is now TITLE only and not compensated with a pay raise as in the past.
5. The union has not done anything to benefit the District Court Offices. If anything, it has created the feeling of segregation between Union and Non-Union employees as everything is so secretive. When a new employee is hired, no one from the union or even a steward provides anything to the new employee, not even a contract.

To reiterate, this is a unanimous vote by **ALL** Clerks and Administrative Assistants within the 4 District Court offices which is indicated on the petition signed by each employee. Therefore, we are respectfully requesting the county to consider our exit from the Union.

(FF 8). Attached to the March 27, 2023 letter was a document called "Employee Petition for Union Decertification," containing a list of 12 signatures of employees from the 4 magisterial district offices. This document also stated the following: "The undersigned employees of Adams County, more specifically, the Clerks and Administrative Assistants with the 4 Magisterial District Court Offices, presently represented by the Teamsters Local Union 776, no longer wish to be represented by a union. We would like the National Labor Relations Board (sic) to allow these employees to exit and no longer be represented by the above union." (FF 9).

On April 24, 2023, the County's Director of Human Resources, Michele Miller, issued a letter to Ms. Markle via email through Chief Clerk Paula Neiman. (FF 12). Ms. Miller credibly testified that the County has no position regarding whether the employees should decertify, and that the County did not want to be involved in whether the employees had or did not have a union. Ms. Miller's April 24, 2023 letter to Ms. Markle provided publicly available information regarding PERA and clarified that the process was within the PLRB's jurisdiction, and not the NLRB's jurisdiction. (FF 17; 19). Ms. Miller's letter expressly stated that it was "informational in nature and contains a brief overview of state law provisions regarding decertification." (FF 12). Under various subheadings the letter states as follows:

Pennsylvania law outlines a process for decertifying a bargaining unit representative. This process is initiated by filing a completed petition with the Pennsylvania Labor Relations Board (the "PLRB"). The petition must be made on a form provided by the PLRB, titled "Petition under the Public Employee Relations Act" (Form PERA-4 rev 5-09). For your reference, we have included a copy of this form with this correspondence. (FF 13).

\* \* \*

If the decertification petition is being filed by employees, the law requires that the employees must establish a showing of interest that at least 30% or more of the employees who are covered by the bargaining unit no longer wish to be represented

by the exclusive collective bargaining representative (in this instance, the Teamsters Local 776). (FF 14).

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The 30% showing is the minimum threshold required to file the decertification petition with the PLRB, and proof of the 30% interest (for example, a document signed by at least 30% of the bargaining unit employees) must be included with the petition. Once the PLRB receives a petition, it reviews all the information submitted and makes a decision to accept or deny the petition. If the PLRB accepts the petition, an election will be held and all Support Unit employees will vote either in favor of or against decertifying the union. A majority (50% or greater) of employees must vote in favor of decertifying the union in order to be successful in the decertification process. (FF 15).

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Petitions for union decertification can only be filed during certain prescribed time periods under the law. In the current circumstance, because the current Collective Bargaining Agreement with Teamsters (effective January 1, 2020 through December 31, 2023) is for a period greater than 3 years and 3 years have already passed since the contract began, employees can now file a decertification petition at any time. However, if and when a new collective bargaining agreement is entered into, depending on the length of the new contract, you would not be able to file the decertification petition until after 3 years have passed (if the contract is for a period longer than 3 years), or between 60 and 90 days before the contract's expiration (if the contract is for a period of less than 3 years). Put simply, the window for filing is between now and the ratification of a successor collective bargaining agreement. Petitions that are not filed in the appropriate time period will be dismissed by the PLRB as untimely.

In the event that you desire to exercise your employee right to file for decertification, I hope you find this general information to be helpful. I am happy to be of assistance with any general, publicly available information you may request. (FF 16).

Ms. Miller attached to her April 24, 2023 letter a blank copy of the PLRB petition form to clarify that employe representation did not involve the County; rather it involved representation procedures with the PLRB. (FF 19). Ms. Miller never spoke to Ms. Markle, or communicated with any other bargaining unit employe regarding Ms. Markle's March 27, 2023 letter, or how to file a petition for decertification with the Board. (FF 20).

Ms. Markle solicited co-workers' signatures for the showing of interest for a decertification petition during her lunch break or after her work hours. Ms. Markle visited coworkers at their workstations. No managers or supervisors were asked for approval or specifically gave permission or approval to Ms. Markle to solicit signatures of employes who were on County property or were possibly on work time. (FF 28).

During July and August 2023, Ms. Markle contacted the Board and spoke to Dennis Bachy, Board Representation Coordinator. Mr. Bachy informed Ms.

Markle that the filing of a decertification petition was the only way for her and her coworkers to be removed from the bargaining unit. (FF 21). Mr. Bachy emailed Ms. Markle a PERA-4 "Petition Under the Public Employe Relations Act" form and assisted her by phone with filling out the form for filing. (FF 22).

On August 21, 2023, Ms. Markle filed a petition for decertification. On the Petition form Ms. Markle used her work address at the Human Services Building, 525 Boyce School Road, Suite 800, Gettysburg, PA 17325, and her work email address. (FF 23).

The County did not provide help or assistance in any way to Ms. Markle to prepare, recommend, or file the decertification petition and no one from the County gave permission to use a work mail or email address on the petition. (FF 23; 24). The County became aware of the filing of the decertification petition when the Board's August 31, 2023 acknowledgement of the filing was received by the County solicitor. (FF 26).

Based on the facts as found by the Hearing Examiner in the PDO, the Hearing Examiner determined that Ms. Miller's April 24, 2023 response was not material assistance or support for the decertification petition rising to the level of interference, coercion or control in violation of Section 1201(a)(1) of PERA. Additionally, the Hearing Examiner found that Ms. Miller's response neutrally provided available public information about the employes' statutory rights, which constituted an acceptable level of speech and cooperation under PERA. The Hearing Examiner further determined that the County could not be held responsible for Ms. Markle's use of her work address and email which was unknown to the County and for which the County did not grant permission. Accordingly, the Hearing Examiner concluded that the Teamsters failed to establish a violation of Section 1201(a)(1), (3) or (5) of PERA, granted the County's motion to dismiss, rescinded the Complaint and directed that the Charge of Unfair Practices be dismissed.

On exceptions the Teamsters assert that Ms. Miller's April 24, 2023 letter transcended merely providing publicly accessible information, and constituted material assistance in the decision to pursue decertification and preparation and filing of a decertification petition with the Board. As a general preface to the review of the Hearing Examiner's findings and conclusions, it is the function of the hearing examiner, who is able to view the witnesses' testimony first-hand, to determine the credibility of the witnesses and weigh the probative value of the evidence presented at the hearing. Plouffe v. State System of Higher Education (Kutztown University), 41 PPER 82 (Final Order, 2010). Based on substantial evidence as found credible by the Hearing Examiner, the hearing examiner is permitted to draw reasonable inferences, make findings of fact, and render conclusions based on those facts. The Board will not disturb the hearing examiner's credibility determinations absent the most compelling of circumstances. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004).

The Teamsters argue that Ms. Miller's April 24, 2023 letter constituted material assistance to the decertification effort. In this regard the Teamsters assert that there is not substantial evidence to support a finding that prior to the County's April 24, 2023 letter, Ms. Markle knew that decertifying the Teamsters was the means to remove employes from the bargaining unit. The Hearing Examiner found, based on the testimony of Ms. Markle, that during the previous collective bargaining agreement, Ms. Markle had been in contact with Mr. Bachy at the PLRB concerning her desires at that time to seek decertification of the Teamsters, and was advised that her

petition, if filed, would have been dismissed as untimely and she would need to wait until the expiration of the current CBA. The Teamsters attempt to challenge this testimony on the basis that, if true, Ms. Markle would not have sent her letter to the County on March 27, 2023, but she would have proceeded directly with a decertification petition with the Board in 2023. However, the Teamsters' speculation and belief that Ms. Markle had no independent desire to decertify the Teamsters, is not extenuating circumstances of record warranting the review of the Hearing Examiner's credibility determination or findings of fact based on Ms. Markle's testimony.

Moreover, attached to Ms. Markle's March 27, 2023 letter was a page captioned "Employee Petition for Union Decertification" signed by Ms. Markle and eleven of her co-workers. This was ample justification for the County to respond on April 24, 2023 that it "has received documentation signed by a number of employees expressing an interest in decertifying the union", and provide publicly available information concerning the decertification process with the Board.

As astutely recognized by the Hearing Examiner, material assistance by the employer in a decertification proceeding requires more than merely providing publicly available information to violate Section 1201(a)(1) of PERA. Indeed, under the totality of circumstances, the employer's conduct must be shown to have a tendency to interfere, restrain or coerce reasonable employees in the exercise of Article IV rights under PERA. PLRB v. Montgomery County Community College, 15 PPER ¶ 15038 (Final Order, 1984), *aff'd*, 16 PPER ¶ 16156 (Montgomery County, 1985); *See also*, Temple Association of University Professionals Local 4531 v. Temple University, 37 PPER 169 (Final Order, 2006) (employer providing preprinted cards to employees to withdraw union membership). The burden is on the charging party to establish through substantial credible evidence that the employer has improperly interjected itself into a representational dispute. Service Employees International Union, Local 585 v. Brownsville Area School District, 14 PPER ¶14183 (Proposed Decision and Order, 1983).

The information provided in Ms. Miller's April 24, 2023 letter was all publicly available information on the Board's website.<sup>1</sup> Indeed, the information provided concerning "decertifying a bargaining unit representative", "filing and election process", and "timing", is found in PERA and in the Board's duly promulgated Rules and Regulations. Section 95.21 of the Regulations provides the requirements and allegations necessary for a decertification petition filed by employees. 34 Pa. Code §95.21. Section 603(c) of PERA and Section 95.21(2) of the Regulations, explain the thirty percent showing of interest, and Section 95.1 of the Regulations define what is needed for the showing of interest. 34 P.S. §1101.603(c); 34 Pa. Code §95.1 and §95.21(2). Section 605(3) of PERA provides that to remain the certified representative the union must receive a majority of the valid votes cast in an election. 43 P.S. §1101.605(3). Finally, Section 605(7) and Section 95.21 of the Regulations explain the three-year contract bar and the sixty-to-ninety-day window period for filing of a decertification petition. 43 P.S. §1101.605(7); 34 Pa. Code §95.21.

Upon a thorough review of Ms. Miller's April 24, 2023 correspondence, under the totality of circumstances, Ms. Miller's letter expressed the

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<sup>1</sup> <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/>

County's neutral position with respect to the employees' free choice of representation. The letter made clear that the County was not interfering, restraining or coercing employees to pursue decertification, and the information as provided could not be perceived by a reasonable employee as having a tendency to coerce or interfere with the employees' free choice with regard to whether to pursue decertification or whether to have representation. Accordingly, the Hearing Examiner did not err in concluding that the County's April 24, 2023 letter did not violate Section 1201(a)(1) of PERA.

Additionally, the Teamsters argue that Ms. Markle's use of her work address and phone number on the petition for decertification constituted unlawful material assistance on the part of the County. However, the Hearing Examiner accepted the unequivocal testimony of Ms. Miller, as corroborated by Ms. Markle, that the County did not give Ms. Markle, or any employee, permission to use a work address or email on petitions filed with the Board. Moreover, to constitute material assistance in a representational dispute, the employer must have been aware of the alleged assistance it was providing. Teamsters Local Union No. 384 v. Central Bucks School District, 33 PPER ¶33084 (Final Order, 2002). Here, there is no evidence that the County gave Ms. Markle permission to use the County address and email, nor that the County was aware that Ms. Markle had used her work address and email on the decertification petition when she filed it with the Board. Accordingly, as a matter of law, the County cannot be found to have materially assisted the efforts of Ms. Markle to decertify the Teamsters in violation of Section 1201(a)(1) of PERA by Ms. Markle's use of the County address and email on her petition.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the County did not violate Section 1201(a)(1), (3) or (5) of PERA. Accordingly, the Board shall dismiss the exceptions, and make the Proposed Decision and Order final.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by Teamsters Local Union No. 776 are hereby dismissed, and the Proposed Decision and Order issued on January 10, 2024, shall be, and the same is, hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this sixteenth day of July, 2024. 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.