

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776 :
 :
 v. : CASE NO. PERA-C-23-207-E
 :
 COUNTY OF ADAMS :
 :

PROPOSED DECISION AND ORDER

On August 21, 2023, Adams County (County) employe Julie Markle filed with the Pennsylvania Labor Relations Board (Board or PLRB) a petition for decertification, under the Public Employe Relations Act (Act or PERA), at Case No. PERA-D-23-186-E, for a bargaining unit of non-professional court-appointed employes represented by Teamsters, Local 776 (Union), alleging that 30% or more of the bargaining unit employes wished to decertify the Union. On September 11th and 18th, 2023, the Secretary of the Board issued an order and notice of hearing and an amended order and notice of hearing respectively.

On September 18, 2023, the Union filed a charge of unfair practices with the Board alleging that the County violated Section 1201(a)(1), (3), and (5) of the Act by unlawfully interfering with the employe-filed petition to decertify the Union and by providing assistance and encouragement to the petitioners. On September 20, 2023, I informed the parties that the petition at Case No. PERA-D-23-186-E was reassigned to me, that the charge at Case No. PERA-C-23-207-E blocked the processing of the petition, and that the hearing scheduled for November 3, 2023 for the petition was cancelled. On September 21, 2023, the Secretary of the Board issued a complaint and notice of hearing on the charge designating a hearing date of October 24, 2023.

On October 6, 2023, the County filed a motion to dismiss the complaint and an application to take the deposition of the attorney of record for the Union in the charge case. On October 13, 2023, I denied the County's deposition application. On October 16, 2023, I denied the County's pre-hearing motion to dismiss because it was premised on the County's version of facts, the resolution of which required a hearing. In the order denying the County's motion to dismiss, I directed the Union to file a more specific pleading further identifying County employes who allegedly committed the acts complained of in the charge and, in dicta, stated that the County did not have a bargaining obligation during the pendency of the decertification petition. On October 20, 2023, the Union filed a more specific pleading, which included the names of County employes allegedly involved in the claimed unfair practice and which included additional allegations that the County gave higher wage increases to non-Union County employes. On November 13, 2023, the Union filed a request for reconsideration of the motion to dismiss because the County had cancelled an interest arbitration hearing/meeting based on the dicta related to the County's bargaining obligations. On November 16, 2023, I denied the Union's request for reconsideration.

After granting 2 continuance requests from the Union, the hearing was rescheduled for Monday, December 11, 2023, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimony, introduce documents, and cross-examine witnesses. At the close of the Union's case-in-chief, the County orally moved for dismissal of

the Union's charge, which I granted. Accordingly, I did not permit the filing of post-hearing briefs for the presentation of legal and factual arguments.

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

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)

3. Michele Miller has been the County's Director of Human Resources for the past 11 years. Don Fennimore is the Court Administrator for the County. He is a state employe. Molly Mudd is the County's solicitor. (N.T. 12-13, 38-39; JXs 2-3)

4. Julie Markle is a County Administrative Assistant in a District Magistrate's office, designated as MDJ 51-3-04, located in the County's Human Services Building. There are 4 District Magistrates' offices in the County. There are 2 District Magistrates' offices within the Human Services Building, and 2 more located some distance away. MDJ 51-3-02 is located in Bonneauville, PA. MDJ 51-3-03 is located in East Berlin, PA. The bargaining unit employes are hired by the judges and the Court Administrator and include the positions of Administrative Assistants, Clerks, and Court Reporters.¹ (N.T. 17, 26-27, 80-81)

5. Sometime during or after the previous collective bargaining agreement (CBA), Ms. Markle and her co-workers attempted to file a decertification petition and accumulated signatures. At that time, Ms. Markle contacted Dennis Bachy at the PLRB and learned from him that she missed the window period for filing the petition and that she would have to wait until the next CBA expired (i.e., the 1/1/20-12/31/23 CBA). It was at this time that Ms. Markle learned how to contact the PLRB from searching online. (N.T. 85-86, 123-124)

6. In January 2023, non-Union employes received a 5% wage increase. Bargaining unit employes received wages and benefits dictated by the CBA. Ms. Markle received a 3% wage increase in January 2023. Ms. Markle was upset that non-Union County employes received higher wage increases in 2023, and she complained to co-workers about the disparity. (N.T. 74-77, 84-85)

7. On March 27, 2023, Ms. Markle sent a letter to Court Administrator Fennimore asking if bargaining unit employes in the 4 magisterial district offices could exit the bargaining unit. Ms. Markle never spoke with Mr. Fennimore about her complaints or decertification. (N.T. 90-92)

8. Ms. Markle's March 27, 2023 letter states as follows:

¹ The record is not clear on whether other positions are included in the bargaining unit. Ms. Markle's March 27, 2023 letter states that the employes in the magistrates offices are part of a larger department.

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.

(N.T. 16-18; JX-1) (emphasis original)

9. 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 to allow these employees to exit and no longer be represented by the above union." (N.T. 21; JX-1)²

10. Ms. Miller received a copy of the March 27, 2023 letter addressed to Mr. Fennimore and shredded her copy because it was forwarded to Solicitor Mudd, and she did not want any part of it. At the time, Ms. Miller did not

² Ms. Markle's reference to the National Labor Relations Board was a typographical error as evidenced by the fact that Ms. Markle had previously spoken with Mr. Bachy from the PLRB 4 years earlier and knew that the PLRB had jurisdiction over any decertification petition that may be filed by County employees.

investigate Ms. Markle's claims that non-Union employees received higher wage increases or have higher medical insurance premiums than Union employees. The bargaining unit employees have lower co-pays for emergency room and urgent care facility visits. (N.T. 16-19, 23, 27, 77)

11. Sometime after shredding the March 27, 2023 letter, Ms. Miller received the letter again with the direction to inform the bargaining unit employees that the County had no interest in whether they remain Union or non-Union. Ms. Miller credibly testified that the County's position was that it was "not our business" and that the County was not going to do anything about it. (N.T. 27)

12. On April 24, 2023, Ms. Miller issued a letter to Ms. Markle via email through Chief Clerk Paula Neiman. The letter purported to be "informational in nature and contains a brief overview of state law provisions regarding decertification." The letter contains 3 subheadings: (1) Decertifying a Bargaining Unit Representative; (2) Filing and Election Process; and (3) Timing. The letter was reviewed by 1 of the County's attorneys. (N.T. 28-30, 99-100; JX-2)

13. Under subheading 1, Ms. Miller explained:

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.

(JX-2)

14. Under Subheading 2, Ms. Miller explained:

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).

(JX-2)

15. She further explained under subheading 2:

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.

(JX-2)

16. Under subheading 3, Ms. Miller explained:

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.

(JX-2)

17. Ms. Miller never discussed with any employees how they can leave or exit the Union without decertifying. Ms. Miller credibly testified that she and other County management employees were not getting involved in the bargaining unit employees' expressed desire to leave the Union. She credibly testified that, in her April 24, 2023 letter, she was referring Ms. Markle to publicly available information and clarified that the process was within the PLRB's jurisdiction, and not the NLRB's jurisdiction. She did not inform Ms. Markle that she was wrong about the NLRB jurisdiction. (N.T. 30-32)

18. In her April 24, 2023 letter, Ms. Miller explained that the "window for filing is between now and the ratification of a successor collective bargaining agreement." Ms. Miller credibly testified that she was explaining the statutorily designated window period for filing a petition and that she was not urging employees to file the petition "now." She did not tell Ms. Markle that, if she waits too long, she could no longer file the petition. (N.T. 42)

19. Ms. Miller attached to her April 24, 2023 letter a blank copy of the PLRB petition form. No part of the form was filled in when Ms. Miller sent it to Ms. Markle. She credibly testified that she attached the blank form to clarify that seeking decertification did not involve the County; rather it involved the PLRB and "it wasn't correct to ask us [about] it." She did not provide Ms. Markle with specific information to include in her petition. Ms. Miller credibly testified that she was not helping Ms. Markle decertify the Union, because the County did not care, rather she was providing public information that could be found online. Ms. Miller and the County have no position regarding whether the employees should decertify. Ms. Markle credibly testified that she did not understand Ms. Miller's April 24,

2023 letter as a promise of any benefit or a threat of any retribution if the petition were to be filed. (N.T. 33-35, 49, 69, 70-71, 124-125)

20. Ms. Miller credibly testified that she understood Ms. Markle's March 27, 2023 letter as seeking assistance and that Ms. Miller's April 24, 2023 letter was communicating that the County was not getting involved or providing assistance. Ms. Miller obtained the information contained in her April 24, 2023 letter online. Ms. Miller did not urge Ms. Markle into taking any action. Ms. Miller never talked to Ms. Markle or communicated with any other bargaining unit employe regarding decertification or how to file a petition. Ms. Markle never wrote a letter to Ms. Miller or asked Ms. Miller for help in pursuing decertification. Also, Ms. Markle did not at any time speak to anyone from the County about the decertification petition, and she did not talk to either the County's solicitor or labor attorney before she filed the petition. (N.T. 35-36, 48-50, 69, 70-71, 118-119)

21. Ms. Markle already knew about the decertification process from her previous conversations with Mr. Bachy from the Board approximately 4 years earlier. During July and August 2023, Ms. Markle again spoke to Mr. Bachy several times about how to file the decertification petition with the PLRB. Mr. Bachy is the only person with whom Ms. Markle spoke regarding the decertification process and petition. Mr. Bachy informed Ms. Markle that the filing of a decertification petition was the only way for her to leave the bargaining unit. (N.T. 100-103, 106, 120-121)

22. Mr. Bachy sent Ms. Markle a form via email and helped her fill out the form by telling her exactly what to put in the various spaces on the form. Ms. Markle did not use the form attached to Ms. Neiman's email and Ms. Miller's letter dated April 24, 2023. (N.T. 106-108)

23. On August 21, 2023, Ms. Markle filed a petition for decertification on which she included her work address at the Human Services Building, 525 Boyce School Road, Suite 800, Gettysburg, PA 17325, and her work email address. Ms. Miller did not give any employe permission to include or use a work mail or email address in the petition. Because Ms. Markle would be receiving certified mail related to the petition filing and she would not be home to receive it, Mr. Bachy told Ms. Markle that it was acceptable to use her work address on the petition. Ms. Markle never asked the County for permission to use her work address or County email. (N.T. 51-56, 66, 70-71, 113; JX-3)

24. Ms. Miller credibly testified that she did not provide help or assistance in any way to Ms. Markle to prepare, recommend, or file the decertification petition and that, to the best of her knowledge, no one else from the County provided Ms. Markle with help to prepare or file the petition. Ms. Miller never relayed to Ms. Markle any position regarding whether or not the bargaining unit employes should attempt to decertify the Union and, to her knowledge, no one else from the County did either. Ms. Markle typed up the petition with Mr. Bachy who told her over the phone exactly what to include in the petition by going through each item on the petition form. Ms. Markle credibly testified that no one from County management assisted with her filing of the petition. (N.T. 57, 69-70, 101, 106-111, 124-126)

25. Ms. Miller "absolutely [did] not" arrange a meeting among bargaining unit employes to discuss the filing of a decertification petition, and she is unaware of any such meeting among bargaining unit employes. Ms.

Miller did not participate in the coordination of any type of gathering of bargaining unit employees either during business hours or outside of business hours. No one from County management had any role in arranging meetings that Ms. Markle had with other bargaining unit employees. No one from County management was present when employees signed either the petition attached to Ms. Markle's March 27, 2023 letter or the petition for decertification filed with the Board. (N.T. 69-70, 125-126)

26. The first time that Ms. Miller became aware of the filing of the petition was after the filing when she was sitting in Solicitor Mudd's office and it was delivered to Ms. Mudd by certified mail and the Solicitor opened it. (N.T. 71)

27. Ms. Miller did not at any time offer any bargaining unit employee a benefit, wage increase, or insurance premium decrease on behalf of the County in exchange for pursuing the decertification petition. Ms. Miller never threatened any bargaining unit employee with any type of retribution if they did not pursue the decertification petition. No one from the County threatened any bargaining unit employee with any type of retribution if they did not proceed with the decertification petition. (N.T. 72-73, 123)

28. Ms. Markle solicited co-workers' signatures either during her lunch break or after her work hours. All employees signed voluntarily. Ms. Markle approached co-workers at their work stations. She did not ask permission from County managers or supervisors to approach employees at their work space. No managers or supervisors were asked for approval or specifically gave permission or approval to Ms. Markle to solicit signatures of employees who were on County property or were possibly on work time. The solicitation and signing was not done in the presence of an office manager. (N.T. 116-117, 127)

DISCUSSION

The Union specifically alleges that the County arranged a meeting among members of the bargaining unit and encouraged them to file a decertification petition; it materially assisted in the preparation of the petition and the solicitation of signatures; it urged members to sign the petition and materially assisted in the filing of the petition. The Union further alleged that the County permitted the petitioner to use the County's business address, facilities, and email to materially assist the petitioner in the filing of the petition, all of which interfered with the employees' rights under PERA and the bargaining relationship between the Union and the County.

In Woodland Hills School District, 13 PPER 13298 (F.O. 1982), the Board addressed the union's claims that the school district employer was allegedly biased towards and gave support to a rival union after the employer prepared and distributed a meeting notice for the rival union. The Board recognized that an employer's discrimination and interference are prohibited, while neutrality and cooperation are encouraged. Although the instant matter involves the decertification of an incumbent without a rival, determining whether the County in this case provided support or favoritism for decertification, as opposed to neutrality, are equally applicable here. In adopting federal law, in the context of a rival petition, this Board quoted from Chicago Rawhide Manufacturing Co. v. NLRB, 221 F.2d 165 (7th Cir. 1955) as follows:

A line must be drawn, however, between support and cooperation. Support, even though innocent, can be identified because it constitutes at least some degree of control or influence. Cooperation only assists the employees or their bargaining representative in carrying out their independent intention. If this line between cooperation and support is not recognized, the employer's fear of accusations of domination may defeat the principal purpose of the Act, which is cooperation between management and labor We think it clear that the cooperation of the Company did not interfere with, constrain, dominate or contribute illegal support to its employees or the Employees Committees.

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Neither mere cooperation, preference nor possibility of control constitute unfair labor practices; and the [NLRB] may not infer conduct that is violative of the Act from conduct that is not, unless there is a substantial basis, in fact or reason, for that inference.

Chicago Rawhide, 221 F.2d at 167. Based on this standard, the Board, in Woodland Hills, concluded that the preparing and distributing of the meeting notice for the rival did not constitute unlawful assistance because the record failed to show that the rival was a beneficiary of aid different in kind from that which was received by the incumbent to use district facilities, circulate freely within buildings, distribute literature, and use available district property for organizing meetings. Compare, County of York, 10 PPER 10157 (FO 1979) (concluding that the employer violated the Act by allowing employees to use its stationery and stamp meter to mail withdrawal requests to the union, where there was no evidence of any common practice of allowing such privileges for other employees or labor groups within the employer's community).

In Alliance of Charter School Employees, Local 6056 v. Multi-Cultural Academy Charter School, 44 PPER 98 (PDO 2013), the union alleged that the employer provided a contribution to the employees' decertification petition that went beyond mere "ministerial aid." Citing Temple Association of University Professionals, Local 4531 v. Temple University, 37 PPER 169 (FO 2006), the examiner noted that an employer may exercise free speech by informing employees of their rights under their collective bargaining agreement or the law, but also recognized that an employer may not materially assist employees in withdrawing their union membership during a decertification drive. The examiner ruled that the employer's provision of the decertification petition from workers to the union and the provision of a letter from the employer's counsel to the union that contained a notice of lack of majority support did not support the conclusion that the employer substantially contributed to the prior decertification drive. See also, PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981) (opining that an employer has a First Amendment right under the Constitution of the United States to communicate its general views to its employees as long as those views do not include actual or veiled threats of reprisal or offers of benefits).

In Armstrong County, 14 PPER 14070 (PDO 1983), several employees organized support for and filed a decertification petition. Two of the employee organizers separately contacted the employer's personnel director asking how to proceed with the decertification. The director informed the first employee that he was not knowledgeable and that any such activity would

have to be handled on the employe's own time. The director informed the second employe to contact the Board. The examiner concluded that the "transmission of such information hardly rises to the level of an unfair practice, as it only connects an employe with the correct neutral state agency and nothing more," and that the union did not show "that these activities or any others in support of the decertification petition was authorized, condoned or known of by the County." *Id.* The Examiner further concluded that the employer did not exceed the "bounds of permissible cooperation or engaged in unlawful aid or assistance" to the employes. *Id.*

In Brownsville Area School District, 14 PPER 14183 (PDO 1983), an employe appeared at one of the elementary schools in the district with a petition for employes to sign. The principal of that school granted permission for her to take the petition to the cafeteria during work hours and asked his secretary and an aid to review the petition. The same employe appeared at another elementary school within the district with a petition for decertification, but the principal of the second school refused her access to the school for the purpose of obtaining signatures. Instead, the principal of the second elementary school proceeded to hand carry the petition around the building to see if any employes in the unit cared to sign it. The examiner, in Brownsville, concluded that the first principal's permitting the employe to solicit signatures on District property during work time, where it had permitted other employe organizations to use the facilities during work hours, did not constitute an unfair practice. The examiner, however, concluded that the district unlawfully assisted employes when the second principal solicited signatures for the decertification petition.

In Minersville Area School District, 12 PPER 12301 (PDO 1981), *adopted*, 12 PPER 12345 (MO 1981), a bargaining unit member, who was the daughter of a school board member, organized and circulated a petition for decertification without the knowledge of any school board member. That employe enlisted the assistance of the district's solicitor in the completion and submission of the petition for decertification. The union alleged that the petition was employer sponsored. The examiner noted that the pertinent test is whether the district's acts of assistance exceeded the bounds of permissible cooperation and constituted unlawful aid and assistance. The examiner concluded that the petition for decertification was organized and filed at the free will of the employes without any involvement from the district. Although he found the solicitor's involvement in the preparation and filing of the petition troubling, the examiner did not find that his involvement was attributable to the district employer because the impetus for the petition voluntarily came from the employes and, therefore, they were not coerced in developing a desire to file the petition for decertification.

In Bradford Area School District, 11 PPER 11151 (PDO 1980), *finalized*, 11 PPER 11216 (MO 1980), the union alleged that the employer solicited bargaining unit employes for signatures as part of a movement to decertify the union. The examiner concluded that the evidence did not support a finding that any individual was solicited by the employer to seek signatures or that the Employer exceeded bounds of permissible cooperation in a manner that constituted unlawful aid and assistance.

In its oral motion to dismiss the charge, the County specifically argued that the Union failed to establish any of the allegations set forth in the charge and that the County's neutral conduct did not favor, support or interfere with the employes' choice to decertify. (N.T. 144-145). I agree.

The case law surveyed above provides that support in the nature of controlling or influencing employees in pursuing their right to decertify may violate the Act. However, cooperation and providing public information to employees about statutory or contractual rights, when asked, does not violate the Act. Woodland Hills, supra. Directing employees, who have already voluntarily decided to pursue decertification, to the Board for information about how to proceed and for the subsequent assistance in the completion and filing of the petition for decertification also does not violate the Act. Armstrong, supra. Although an employer's manager soliciting signatures for a petition for decertification crosses the line into material or substantial assistance, allowing employees who have previously decided to pursue the petition to use the employer's property to solicit signatures on work time does not constitute material assistance or interference with employee rights under the Act, where the same privileges are equally granted to others. Brownsville, supra. Moreover, where employees had already voluntarily pursued a decertification petition and obtained signatures from co-workers on their own, even the enlistment of the employer's solicitor to help prepare and file the petition was not attributable to the employer and did not violate the Act, where there was no evidence that the employer directed the assistance. Minersville, supra.

In this case, Ms. Markle voluntarily pursued decertification and learned about the process from Mr. Bachy from the PLRB 4 years ago at or about the time that the previous collective bargaining agreement expired and the recent CBA became effective. However, that effort was untimely. Still dissatisfied with Union representation, Ms. Markle again voluntarily organized co-workers to support the petition for decertification after the expiration of 3 years of the most recent 4-year CBA. Ms. Markle again contacted Mr. Bachy, during the summer of 2023, who provided assistance with completing and filing the petition, which cannot be attributable to the County. Mr. Bachy educated Ms. Markle on how to file the petition. He went through each part of the petition with her and told her how to fill it out. Mr. Bachy informed Ms. Markle that filing the petition for decertification was the only way for her to leave the bargaining unit. The County was not involved in any way.

The evidence does not establish that anyone from the County arranged a meeting among members of the bargaining unit and/or encouraged them to file a Decertification Petition. Ms. Miller never discussed with any bargaining unit employee how they could "exit" or decertify the Union. Ms. Miller credibly testified that she and other County management employees were not getting involved in the bargaining unit employees' expressed desire to leave the Union. Also, no one from the County assisted in soliciting signatures or urged employees to provide signatures in support of the petition filed by Ms. Markle; no County manager encouraged any employee in the bargaining unit to support the filing of the decertification petition.

Ms. Markle voluntarily organized support for the petition and obtained signatures on County property and possibly during the work time of her co-workers. However, no one from the County knew about the activity, authorized the activity, or granted permission to Ms. Markle to conduct the activity. Ms. Markle used her email and business addresses on the petition based on Mr. Bachy's advice that she could do so because she would not be home to receive and sign for any certified mail from the Board while she was at work, if she used her home address. The County did not know that Ms. Markle filed the petition for decertification and used her work email and address until after it was filed and later received by the County's solicitor. Also, no manager

or supervisor of the County was present when employees discussed decertification or signed their names in support of the petition.

The County cannot as a matter of law be responsible for the voluntary actions of employees which were unknown to the County and for which the County did not grant permission. Also, even had the County expressly condoned Ms. Markle's solicitation of signatures and her organizing activities on County property as well as the use of County email and business addresses, there is no evidence in the record that the County did not permit organizing activities for other employee representatives. If the County had permitted the use of County property for such purpose, it may have been obligated to permit Ms. Markle to organize a decertification drive on its property. Brownsville, supra.

Even when Ms. Markle solicited assistance from the County, in her March 27, 2023 letter to Mr. Fennimore, the County remained neutral and uninvolved. In response to Ms. Markle's expressed desire to "exit" the union accompanied by her preliminary showing of interest to decertify the Union, Ms. Miller initially refused to respond and shredded the letter, until later directed to respond to Ms. Markle. A month after Ms. Markle's letter, Ms. Miller responded with an outline of publicly available information that she obtained online relating the neutral facts about her understanding of the legal process and about contacting the PLRB for decertifying the Union, which Ms. Markle did.

Ms. Miller informed Ms. Markle, in her April 24, 2023 letter, that a decertification petition is filed with the Board on a certain form and must be supported by the inclusion of signatures of at least 30% of the employees in the bargaining unit. She also outlined the specific time periods required by the Act and the Board for the filing of a decertification petition. Ms. Miller attached a blank petition form that was not filled out in anyway but was provided to show Ms. Markle how to contact the Board because the form contained PLRB contact information. The County's neutrality is further evidenced by Ms. Miller's language in her response letter that stated: "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." (F.F. 8) (emphasis added)"

Ms. Miller's response constituted legally acceptable cooperation with labor as promoted by the Act. Woodland Hills, supra. It was not material assistance or support in the nature of interference, coercion or control. The response was also well within Ms. Miller's, and the County's, exercise of the right of free speech to neutrally provide available public information about the employees' contractual and statutory rights, which is permitted by law and within the boundaries of acceptable communication regarding decertification petitions. Temple, supra; Multi-Cultural Academy, supra.

During the hearing, the Union focused on certain language used in Ms. Miller's April 24, 2023 letter. Specifically, the Union questioned Ms. Miller's use of the term "now" 2 times in the timing section of her letter. In this section of her letter, Ms. Miller stated:

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 passed since the contract began, employees can now file a decertification petition at any time. . . 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.

(JX-2). Ms. Miller's double use of the word "now" does not constitute the direction, encouragement, or urging, by Ms. Miller or the County, to file a petition for decertification immediately, soon, or "now." The language was rather a neutral, free-speech explanation that the window period was open if Ms. Markle chose to file the petition before the next contract.

Ms. Miller credibly testified that no one from the County was in anyway involved with helping, had any interest in, or took any position regarding Ms. Markle's voluntary efforts to decertify the Union. Ms. Markle did not speak to anyone from the County or County counsel about decertifying prior to filing the petition for decertification. Finally, no one from the County at any time offered any bargaining unit employe any increase in wages or benefits. No one from the County offered any employe lower insurance premiums or threatened any employe with reprisal if they did not pursue decertification. Stairways, supra.

Although not specifically alleged in the original charge, but later referenced in the Union's more specific pleading, the Union proffered at the hearing evidence that the County gave higher wage increases to non-Union employes than it gave to Union employes in January 2023. However, there is no nexus between the non-Union wages increases and the Union wage increases on the one hand and the alleged County influence or support of decertification on the other. The County was contractually obligated under the CBA to give the negotiated wage increases bargained for in the CBA and could not deviate from those terms. The County was entitled to give higher or lower wage increases to non-Union employes. The County gave those wage increases to non-Union employes before the County had any knowledge of Ms. Markle's decertification drive. The increases were, therefore, not designed or intended to influence bargaining unit employes in pursuing decertification.

Although the disparate wage increases to non-Union employes had the contributory effect of causing Ms. Markle to pursue decertification of the Union, I have found no authority for the proposition that giving higher wage increases to non-union employes than the contractually mandated wage increases of union employes, who later seek decertification, constitutes unlawful interference encouraging decertification. Moreover, Ms. Markle had voluntarily pursued decertification 4 years ago but missed the filing window. In this regard, the January 2023 wage increases were not the sole basis for Ms. Markle's desire to decertify, although she did include them as a complaint in her March 27, 2023 letter to Mr. Fennimore. The County was not able to deviate from the CBA which was negotiated 3 years earlier than January 2023 (i.e., 2020), when revenue streams for the County may have been lower than they are now. Accordingly, the higher wage increases for non-Union employes is not, by itself, indicative of unlawful influence or coercion to encourage decertification, under the totality of the circumstances. If the Union were to prevail on its position in this regard, the wages, hours and other terms and conditions of employment of management, and other non-union employes, across the Commonwealth would be dictated by collective bargaining agreements involving the same employer that do not apply to them and that were negotiated without them in mind or on their behalf.

Also, although the Union checked off the box for a discrimination claim under Section 1201(a) (3) and a bargaining claim under Section 1201(a) (5) on the face of the charge form, it did not allege in its specification of charges how the facts alleged constituted discrimination, retaliation or a bargaining violation. The specification of charges lacks allegations, explanations or support for a claim of retaliation or discrimination for protected activity or allegations that the County violated any identified bargaining obligation. The specification of charges only alleges unlawful interference with employees' rights and their relationship with the Union, which allegedly constituted an independent 1201(a) (1). Therefore, the Union's causes of action under Section 1201(a) (3) and (5) are waived and dismissed. York Paid Firefighters Ass'n, Local 627 v. City of York, 22 PPER 2226 (FO 1991) (holding that the union's failure to set forth any facts in its specification of charges which could suggest a causal connection between the implementation of a light duty policy complained of and protected activity warrants dismissal of the discrimination charge); See also, Conway Borough Police Department v. Conway Borough, 28 PPER 28196 (PDO 1997).

Alternatively, the Union did not establish with substantial, competent evidence that disparate wage increases constituted evidence from which to infer that the County was unlawfully motivated to influence employee decertification, where the evidence supports the contrary conclusion that the County was completely neutral and disinterested in decertification and lacked any knowledge of it when it gave the wage increases in January 2023. The Union's discrimination claim is, therefore, also dismissed on the merits, as a matter of law, for lack of knowledge and unlawful motive. Also in the alternative, the Union did not identify on the record what bargaining violation the County could have possibly violated. If the County's bargaining claim was in reference to the wage increase for non-Union employees, there is no evidence supporting the position that, in giving higher wage increases to non-Union employees, the County violated a duty to bargain with the Union. If the Union's position is that the County engaged in direct dealing with Ms. Markle or other employees regarding decertification, there is no evidence of that either.

Accordingly, the County has not engaged in unfair practices in violation of Section 1201(a) (1), (3), or (5), the County's motion to dismiss the charge of unfair practices is granted, the charge is hereby dismissed, and the complaint is rescinded. At this time, I recommend that the Board Representative remove the block on the petition for decertification, at Case No. PERA-D-23-186-E, effective September 20, 2023, and proceed with the processing of that petition.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The County is a public employer under PERA.
2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The County has not violated Section 1201(a) (1), (3), or (5) 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 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 and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this tenth day of January 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

Jack E. Marino, Hearing Examiner