[J-15A&B-2015][M.O. – Stevens, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

LANCASTER COUNTY	:	No. 109 MAP 2014
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court dated 12/30/13 at
	:	No. 1110 C.D. 2012, which reversed a
PENNSYLVANIA LABOR RELATIONS BOARD	:	final order of the Pennsylvania Labor Relations Board entered 5/15/12 at No. PERA-C-10-368-E
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO DISTRICT COUNCIL 89, Intervenor	:	
APPEAL OF: PENNSYLVANIA LABOR RELATIONS BOARD	:	

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APPEAL OF: AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES DISTRICT COUNCIL 89, Intervenor	:	ARGUED: March 11, 2015

CONCURRING OPINION

MR. CHIEF JUSTICE SAYLOR **DECIDED: October 27, 2015**

I concur in the result but have differences with the majority's rationale.

Primarily, I believe that the majority opinion deals too loosely with the knowledge element of the litmus for the finding of an unfair labor practice based upon anti-union animus, as reflected in *St. Joseph's Hospital v. PLRB*, 473 Pa. 101, 373 A.2d 1069 (1977). In this regard, the majority appears to largely bifurcate the elements of knowledge of protected union activity and of motive. *See, e.g.*, Majority Opinion, *slip op.* at 31. For example, the majority accepts as sufficient to establish the knowledge-of-protected-activity criterion information known to supervisors (*i.e.*, Mr. Arnold and Ms. Delgado) other than the one who made the decision to terminate Messrs. Epps and Medina (*i.e.*, Mr. Fredericks). *See id.* at 31-32. *St. Joseph's Hospital* itself, however, confirms that the knowledge and motive elements are materially interrelated. *See, e.g.*, *St. Joseph's Hosp.*, 473 Pa. at 107, 373 A.2d at 1072 (discussing the PLRB's salient findings that a supervisor knew of the union activities of discharged employees and "that her anti-union attitude *combined with this knowledge* to motivate the discharges" (emphasis added)). Furthermore, the decision in *PLRB v. Cadman*, 370 Pa. 1, 87 A.2d 643 (1952), also cited by the majority, stands for the proposition that a supervisor's anti-union expressions could be attributed to the employer, *see id.* at 3-4, 87 A.2d at 644, not that knowledge of union activities can be imputed loosely among supervisors.

Obviously, the conventional scenario embodying an unfair labor practice predicated upon anti-union animus occurs when a supervisor with knowledge of union activity on an employee's part acts in a discriminatory or otherwise improper fashion relative to the employee. *See, e.g.*, *St. Joseph's*, 473 Pa. at 107-08, 373 A.2d at 1072. This is not to say that the supervisor who takes action *must* have knowledge, for example, in a scenario in which other employer representatives with knowledge act in a

way which materially affects the supervisor's conduct. Neither the majority nor the PLRB, however, has made a meaningful demonstration that this sort of subversion occurred in the present case.[1] Thus, as I read the proposed decision of the hearing examiner, as adopted by the Board, knowledge and anti-union animus on the part of the supervisor who made the decision to terminate was inferred. *Accord* Majority Opinion, *slip op.* at 34-35 (observing that the hearing examiner and the Board rejected as incredible that supervisor's explanations for the discharge decision). In this regard, and applying the required deference, I find the evidence sufficient to support the Board's findings.

[1] I acknowledge that the hearing examiner, the Board, and the majority have discussed the conclusion that the investigation into missing property, in which Mr. Arnold and Ms. Delgado were involved, was not performed in a neutral manner. *See, e.g.*, Majority Opinion, *slip op.* at 35-36. Nevertheless, there is little explanation how this fact would have caused Mr. Fredericks to disregard conventional disciplinary procedures, engage in disparate disciplinary treatment, and formulate pretextual reasons for discharge, unless he himself was motivated by anti-union animus. Indeed, to the degree that this case would turn on the motivations of Arnold and Delgado alone, I would find the evidence insufficient to support the finding of an unfair labor practice relative to the terminations.