

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

GREENVILLE EDUCATION ASSOCIATION :  
PSEA/NEA :  
v. : Case No. PERA-C-08-462-W  
GREENVILLE AREA SCHOOL DISTRICT :

**FINAL ORDER**

Greenville Area School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on January 18, 2011, challenging a Proposed Decision and Order (PDO) issued on December 29, 2010. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA) when it suspended and subsequently discharged Jon Ross, President of the Greenville Education Association, PSEA/NEA (Association), in retaliation for his protected activity. On February 8, 2011, the Association timely filed a response to the exceptions and a supporting brief.

The facts found by the Hearing Examiner are summarized as follows. Mr. Ross began his employment with the District in 1988. Mr. Ross has been a member of the Association since 1988. He served as Association Vice President in the mid-1990s, Grievance Chair in the late 1990s and again Vice President in the early 2000s. Mr. Ross served as President of the Association for the five years prior to his termination. Dr. Patricia Homer served as the District's Superintendent during Mr. Ross's entire time as an Association officer. Prior to his suspension in 2008, Mr. Ross was teaching third grade at Hempfield Elementary School.

In the 2001-2002 school year, Mr. Ross filed a grievance on his own behalf challenging an unpaid suspension. The grievance was sustained at arbitration and Mr. Ross received three days of back pay in the award. This was the only grievance in the eight years prior to the hearing that proceeded to arbitration.

As Association President, Mr. Ross met with Dr. Homer on various occasions regarding grievances and other concerns of Association members.

During the 2003-2004 school year, Mr. Ross brought to Dr. Homer issues involving two part-time teachers whose pay did not match their work hours.

The matters were resolved in favor of these two teachers; however, neither teacher was brought back for the following school year.

On April 17, 2006, the Association filed an unfair practice charge against the District alleging that the District denied Mr. Ross an assistant track coach position in violation of PERA. The Association requested that this charge be held in abeyance.

In the winter of 2006, Mr. Ross and Bradley Solderich, another Association representative, met with Dr. Homer to advocate on behalf of teacher Genna Rossi who was being asked to do paperwork amounting to two positions. Dr. Homer refused to discuss the issue and told Mr. Ross and Mr. Solderich that the Association could not discuss with her how employes were used in their positions or how they were paid. She slammed the desk and excused them.

Mr. Ross actively engaged in negotiations for the current contract. Mr. Ross served on the negotiating committee for prior contracts, but was not actively involved in the negotiations. The negotiations for the current contract lasted for two years. During those contract negotiations, the professional employees worked for an entire year without a contract. This was the first time this occurred since Mr. Ross started working for the District. Mr. Ross expressed his opinion that the negotiations were difficult because the District placed roadblocks in the way of the Association's requests to discuss daily concerns of their members. The Association took a strike authorization vote for the first time during those contract negotiations.

The District hired Attorney Charles Steele as labor counsel to negotiate with the Association. Attorney Steele made negative comments to Barbara Henning, PSEA UniServ Representative, concerning Mr. Ross's participation in bargaining. Attorney Steele contended that Mr. Ross's behavior at the bargaining table was impeding the negotiations. Michael Downing, school board President, and Dennis Webber, a school board member, also made unfavorable comments regarding Mr. Ross's participation in bargaining. Ms. Henning was also at the negotiations and she observed no such behavior by Mr. Ross. Dr. Homer testified that Mr. Ross was not a problem at the negotiations.

In February 2008, Mr. Ross made plans to speak at the upcoming school board meeting. The District scheduled the meeting for Hempfield Elementary School, as opposed to the usual location of the high school. Mr. Ross intended to discuss the Dr. Seuss Read Across America Program in which his students were participating. He planned to invite the school board members to attend his classroom. He did not inform the administration or the school board that he wished to speak.

The evening of the meeting, Board President Downing and High School Principal Don Ziegler came to Mr. Ross's room and warned him not to speak at the school board meeting. Mr. Ross stated that he was not comfortable having a meeting with them without another Association representative present and he tried to make his way to the door to leave. Board President Downing interrupted him and said, "You don't have to talk, you need to listen." Board President Downing then shut Mr. Ross's door and went on to tell him that he was not to speak at the school board meeting. Board President Downing said that he had contacted Ms. Henning and was under the impression that she had also told Mr. Ross not to speak. Attorney Steele, on behalf of Dr. Homer, had earlier called Ms. Henning to discuss Mr. Ross's plans to speak at the school board meeting. Attorney Steele stated that to do so was "problematic" and he asked Ms. Henning to dissuade Mr. Ross from doing so. However, Mr. Ross attended the school board meeting and spoke about the reading program.

A few days after the meeting, Hempfield Principal Nancy Castor told Mr. Ross that he was "out of line" in speaking at the meeting and that he should first come to her with any issues for discussion. Mr. Ross responded that he observed other teachers speak to the school board about programs on several occasions. Principal Castor replied, "Well, you have to understand you are not other people." Principal Castor went on to warn Mr. Ross to watch what he was doing because the school board held an executive session to discuss his personnel file and history with the District prior to the school board meeting.

Board Member Webber stated that Dr. Homer reviewed Mr. Ross's personnel file with the school board in February 2008. She discussed the record of disciplinary actions against Mr. Ross.

From February to June 2008, Emily Castor Jackson was employed by the District as a long term substitute teacher at the Hempfield Elementary School. On March 7, 2008, Ms. Jackson complained to her immediate supervisor, Deanna Grantham, that Mr. Ross made inappropriate sexual comments to her. Ms. Jackson wrote a statement of her complaint. Ms. Grantham advised Ms. Jackson to take the matter to Principal Castor, who is Ms. Jackson's mother. Principal Castor referred the matter to another elementary building principal, Brian Bronson, because the complaint was from her daughter. Principal Bronson referred the case to Dr. Homer.

Deanna Grantham is an elementary teacher who worked with Mr. Ross in the Hempfield Elementary School. She began working in the District in 2002. On March 7, 2008, Ms. Grantham complained to Principal Castor that Mr. Ross had screamed at a student. Ms. Grantham further claimed that in February, Mr. Ross made inappropriate sexual comments to her. Principal Castor also referred Ms. Grantham's complaint to Principal Bronson.

At some point in March, Dr. Homer decided to turn the complaints over to Attorney Steele, the District's labor solicitor. Dr. Homer delegated full authority to Attorney Steele to conduct the investigation of the complaints against Mr. Ross, including the authority to recommend the level of discipline. Also in March, Dr. Homer reported these allegations to Board President Downing and Board Vice President Nancy Kremm, who is also the Chair of the Board's Personnel Committee.

Even though Principal Castor turned the complaints over to another principal, she again became involved in the investigation in March when Attorney Steele asked her to arrange for the meetings and interviews with the complainants. Attorney Steele first met with Ms. Jackson and Ms. Grantham in March 2008 in a meeting that lasted approximately one hour. Following Attorney Steele's meeting with the women, he met with Principal Castor to discuss the cases. Attorney Steele needed more information and advised Principal Castor that the District should keep the investigation open.

In April 2008, Mr. Ross assisted his members in deciding whether to take a vote of no confidence against two high school principals, as well as Dr. Homer. Mr. Ross conducted two meetings of the membership in April 2008 concerning the no confidence vote. In mid-to-late April, Attorney Steele learned of the possibility of the Association's no confidence vote and request for a meet and discuss with the school board. On May 1, 2008, the faculty of the junior and senior high schools approved a vote of no confidence in the principals. The full membership also approved a vote of no confidence in Dr. Homer. In early May 2008, the Association sent a letter to Board President Downing to alert him of the results of the no confidence vote.

On May 14, 2008, Attorney Steele called Ms. Henning and told her that one teacher and one aide filed sexual harassment charges against Mr. Ross within the last six months, but dropped them when the investigation began. In this conversation, Attorney Steele related the specifics of the March 2008 complaints of Ms. Jackson and Ms. Grantham about Mr. Ross. This was the first time that Attorney Steele reported the complaints to Ms. Henning even though Steele knew about them two months earlier.

On May 28, 2008, Principal Castor completed Mr. Ross's year-end rating on the Pennsylvania DEBE form. She rated Mr. Ross with a perfect score of 80 out of 80. The evaluation made no mention of the March 7, 2008 allegations by Mr. Ross's fellow employees. The evaluation form included a note from Dr. Homer stating her disagreement with the rating. Dr. Homer signed her note, but did not date it or state the reasons for her disagreement with the rating. The District has previously used ratings as a means to critique teachers in all aspects of their employment. Mr. Ross once received a lower evaluation score for alleged problems in his interactions with the administration. Mr. Ross was not aware that anyone had made complaints against him when he received his evaluation in 2008.

On June 4, 2008, Attorney Steele and Ms. Henning were speaking about their negotiations that were taking place in another school district. Ms. Henning stated that "all of a sudden" Attorney Steele began discussing Mr. Ross. Attorney Steele referenced the no confidence vote and the Association's meet and discuss request. He said nothing about the sexual harassment allegations and, at that point, Ms. Henning believed nothing was to happen with those allegations because Attorney Steele had previously told her that the employees dropped the charges.

On June 14, 2008, Mr. Ross and Board President Downing met at a restaurant for breakfast to set up the meet and discuss session between the Association and the school board. They agreed to June 26, 2008 at 7:30 p.m. in the high school library as the time and place of the meeting. On June 26, 2008, the Association engaged in the meet and discuss session with the school board. Mr. Ross and five teachers representing the various buildings made presentations to the school board. The meeting lasted a little over two hours.

On July 1, 2008, Attorney Steele had another phone conversation with Ms. Henning. The conversation began with a discussion over interpretation of Internal Revenue Service rules. Then Attorney Steele turned the conversation to his concerns about a custodian bringing up allegations against Dr. Homer. Attorney Steele stated that he believed that Mr. Ross was also involved in those allegations. Attorney Steele insisted that Mr. Ross produce documentary proof of the custodian's allegations, stating that he never saw a union president act this way. Finally, Attorney Steele said that he wanted to give Ms. Henning a "heads up" that the two sexual harassment allegations discussed earlier may be brought back up by Dr. Homer. Ms. Henning warned Attorney Steele that if Dr. Homer

revived those allegations, it would be considered retaliation for Mr. Ross's participation in the no confidence vote and the meet and discuss session. She warned him that the Association would file an unfair practice charge.

Genna Rossi was an elementary teacher who worked with Mr. Ross at Hempfield Elementary from 2002 to December 2007. She later married and used Zelinsky as her last name. In 2002, Ms. Rossi complained that Mr. Ross made inappropriate sexual comments to her. As a result of Ms. Rossi's complaint, the District issued Mr. Ross a written reprimand that stated, among other things, that "[a]ll sexual joking, bantering, and innuendos were to stop immediately not just with Miss Genna Rossi but with all staff members. There is to be no retaliation against Miss Rossi by Mr. Ross or anyone else. Any further violations of your Action Plan would result in unpaid leave and/or another unsatisfactory rating." Mr. Ross made no more sexual comments to Ms. Rossi after 2002. However, Ms. Rossi believed that Mr. Ross shunned her in this period to the point where she was unable to receive Mr. Ross's cooperation in helping students whom they both taught. In 2006, Ms. Rossi complained of Mr. Ross's uncooperative behavior to Principal Castor. Principal Castor transferred Ms. Rossi to another location because of her complaint. At that time, the District did not discipline Mr. Ross for the alleged shunning or retaliation against Ms. Rossi.

On or about August 11, 2008, Attorney Steele first met with Ms. Rossi. This was a few days before Ms. Rossi was to leave for Germany where her husband was on military assignment. The August 11, 2008 meeting was the first contact between Attorney Steele and Ms. Rossi. The meeting was arranged by Principal Castor. Ms. Rossi was in Pennsylvania from June 14 through August 15, 2008. She stayed with her parents in Sharon, Pennsylvania, which is near Greenville. No one from the District contacted her until August 11, 2008, just days before she was to return to Germany.

On September 8, 2008, Ms. Jackson signed an affidavit about the March 7 incident that had been prepared by Attorney Steele. In October 2008, Attorney Steele, meeting in executive session with the school board, first informed the entire board about the two employees' allegations against Mr. Ross. At this meeting, Attorney Steele described Mr. Ross as wearing a "bull's-eye" on his back. Attorney Steele then raised his hands as if holding a rifle, and said "we've got him in our sights."

On October 20, 2008, the District issued a written statement of charges against Mr. Ross, including but not limited to, sexual harassment and retaliation, and mistreatment of children under Mr. Ross's supervision. The District suspended Mr. Ross without pay.

The parties' collective bargaining agreement provides teachers with a choice to appeal dismissals via an appeal to the Greenville School Board or to a labor arbitrator. Mr. Ross chose to have his case heard by the school board.

The school board conducted numerous days of hearing on the charges against Mr. Ross during January to March 2009. On March 4, 2009, the school board voted to find Mr. Ross guilty of violating two sections of the School Code, Persistent and Willful Violation or Failure to Comply with School Laws (by a vote of 8-1) and Immorality (by a vote of 6-3). The school board then returned to deliberation to determine the appropriate discipline. On April 20, 2009, the school board ultimately concluded that a discharge was appropriate, but also decided to offer Mr. Ross a last chance agreement providing for Mr. Ross's return to work with certain conditions. This disciplinary action was approved by a 9-0 vote of the school board. Mr. Ross chose not to accept the last chance agreement. The District thereafter terminated his employment.

The District has a progressive discipline policy that provides for (1) an oral reprimand; (2) an oral reprimand with notation; (3) a written reprimand; (4) a disciplinary suspension and (5) dismissal. After the District issued Mr. Ross a written reprimand in 2002, he did not receive any further discipline until his employment was terminated in 2009.

The Association filed a Charge of Unfair Practices on December 1, 2008, alleging that the District violated Section 1201(a)(1) and (3) of PERA by suspending, with the

intent to discharge, Mr. Ross in retaliation for his protected activity. Nine days of hearing were held before the Board's Hearing Examiner on June 17 and 18, August 18, September 10, October 9, 26 and 30, and December 7 and 8, 2009, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.<sup>1</sup> Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner concluded that the District brought the sexual harassment charges against Mr. Ross because of anti-union animus for his protected activity and not as a result of a bona fide sexual harassment investigation, relying on Lehighton Area School District v. PLRB, 682 A.2d 439 (Pa. Cmwlth. 1996) (discharge of shop steward was motivated by anti-union animus and steward would not have been dismissed absent his protected activity). The Hearing Examiner further concluded that based upon the totality of the circumstances, the District's actions constituted an independent violation of Section 1201(a)(1). By way of remedy, the Hearing Examiner ordered the District to offer unconditional reinstatement to Mr. Ross to his former position with back pay.

In its exceptions, the District challenges the Hearing Examiner's credibility determination in favor of Mr. Ross. 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. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). The Board will not disturb the hearing examiner's credibility determinations absent the most compelling of circumstances. *Id.* The District alleges that the Hearing Examiner erred in failing to credit the testimony of its witnesses over the allegedly inconsistent testimony of Mr. Ross. Based upon a review of the record, the District has failed to present compelling reasons warranting the reversal of the Hearing Examiner's decision to credit the testimony of Mr. Ross. Accordingly, this exception is dismissed.

The District further challenges the Hearing Examiner's failure to credit the District's explanation for the delay in the investigation of the complaints made against Mr. Ross. In discrediting the District's reasons for the seven-month delay in bringing the charges against Mr. Ross, the Hearing Examiner stated as follows:

The District's explanation is hard to accept for three reasons. Steele could have obtained Ross' personnel file, which would have disclosed the relevant facts of the 2002 case and learned about the existence of [Ms. Rossi]. Second, [P]rincipal Castor was the supervisor of all of these employes. Castor knew of [Ms. Rossi's] earlier problems with Ross, the alleged shunning. She agreed to move [Ms. Rossi] because of problems she was having with Ross. Third, in the five years after the District disciplined Ross for the incident with [Ms. Rossi], no one in the District said anything to Ross about him shunning or retaliating against her.

Even if one accepts the District's argument that Steele had to interview [Ms. Rossi], the question that must be asked is why did it take Steele another month and a half, until August 11, [2008] to interview her? The District claims it could not locate [Ms. Rossi]. However, she was at her parents' home in nearby Sharon for most of the summer. Steele interviewed her just days before her return to Germany.

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<sup>1</sup> The District alleges in its exceptions that the Hearing Examiner erred in denying its request to present the testimony of additional witnesses. Pursuant to the Board's Rules and Regulations, the hearing examiner has "full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon motions and objections subject to review by the Board." 34 Pa. Code § 95.91(f). Further, the hearing examiner may "[e]xclude irrelevant or immaterial testimony." 34 Pa. Code § 95.91(h)(3). The Board received a letter from the District on December 21, 2009, listing the witnesses that the Hearing Examiner did not permit to testify and the testimony to be offered by each witness. A review of the District's letter reveals that the testimony to be offered by the additional witnesses is irrelevant and/or cumulative. Therefore, the Hearing Examiner did not err in denying the District's request.

Having reviewed these explanations, I am not persuaded that the District did all it could to conduct a swift and sincere investigation of the March 7[, 2008] sexual harassment charges.

(PDO, p. 12). As set forth above, the Hearing Examiner thoroughly explained his reasons for discrediting the District's proffered explanation regarding the delay in bringing the charges against Mr. Ross. Thus, the District has failed to present compelling reasons to warrant reversal of the Hearing Examiner's credibility determination. Commonwealth of Pennsylvania Department of Corrections Pittsburgh SCI, supra.

The District further alleges that the Hearing Examiner erred in allegedly failing to consider the Commonwealth Court's decision in Ross v. Unemployment Compensation Board of Review, 1120 C.D. 2009 (Pa. Cmwlth. 2009) (unpublished decision), in which the Court upheld the Unemployment Compensation Board of Review's conclusion that Mr. Ross engaged in willful misconduct and therefore was not entitled to unemployment compensation benefits. However, as the District acknowledges, in Rue v. K-Mart Corporation, 552 Pa. 13, 713 A.2d 82 (1998), the Pennsylvania Supreme Court held that decisions in unemployment compensation proceedings do not have preclusive effect in other proceedings because the unemployment compensation system is designed to adjudicate matters quickly and informally, and does not provide parties with a full and fair opportunity to litigate particular issues. Thus, unemployment compensation proceedings do not meet the fourth prong of the well-recognized standard for application of the doctrine of collateral estoppel.<sup>2</sup>

Nor is the result here different because the Commonwealth Court affirmed the decision in the unemployment compensation proceeding in favor of the District. In Rozek v. Bristol Borough, 613 A.2d 165 (Pa. Cmwlth. 1992), the Commonwealth Court affirmed a decision in a civil service proceeding upholding an employee's discharge, but held that such decision did not preclude affirmance of the Board's order holding that the employee was discharged for union activity and must be reinstated. The Court's rationale was stated as follows:

The Legislature ... has chosen to give certain protections to employees of this Commonwealth. For example, in addition to those mentioned in this opinion, employees are protected against discrimination by Section 3 of the Human Relations Act... Employees also may challenge actions under any existing collective bargaining agreement. Because the Legislature has not chosen to limit the existence of alternative remedies whenever an action of an employer affects the rights guaranteed by the various acts, any decision which concludes that the employee's rights under the act have been violated must control, as long as the decision is one the adjudicating body is empowered to make. In this case, the PLRB has jurisdiction to decide if an unfair labor practice was committed; having concluded that there was an unfair labor practice, the PLRB was empowered to order Rozek's reinstatement. Therefore, that order must control and take precedence over the order of the common pleas court which affirmed the decision of the Civil Service Commission.

613 A.2d at 169. This same rationale requires rejection of the District's claim that the decision in the unemployment compensation proceeding requires reversal of the Hearing Examiner's decision that Mr. Ross was terminated because of his union activity in violation of PERA. Indeed, the District admits that the Commonwealth Court's decision in the unemployment compensation case does not address whether the District had a discriminatory motive for discharging Mr. Ross. Therefore, the Hearing Examiner did not err in ruling in Mr. Ross's favor, given the Hearing Examiner's determination that it was Ross's union activity rather than his interaction with his co-workers that caused his discharge.

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<sup>2</sup> As discussed by the Supreme Court in Rue, collateral estoppel applies where (1) an issue decided in a prior action is identical to one presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. 713 A.2d at 84.

The District next alleges that the Hearing Examiner erred by concluding that the District was aware of Mr. Ross's protected activity. Pursuant to Section 1201(a)(3) of PERA, the charging party must prove that (1) the employe engaged in protected activity; (2) the employer was aware of the employe's protected activity; and (3) the employer took adverse action against the employe because of a discriminatory motive or anti-union animus. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). The charging party must demonstrate that all three elements are present in order to establish a prima facie case under Section 1201(a)(3). Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993). The burden then shifts to the respondent to rebut the charging party's prima facie case. Id.

The record reveals that Mr. Ross met with Dr. Homer on numerous occasions to advocate for the rights of bargaining unit members. During one such meeting, Dr. Homer refused to discuss the issue brought by Mr. Ross, indicated that the Association could not discuss with her how employes were used in their positions or how they were paid and slammed the desk and excused him. The record also shows that Mr. Ross actively engaged in negotiations for the current contract. Attorney Steele was also involved in negotiations as labor counsel for the District and he made negative comments concerning Mr. Ross's participation in bargaining. Board President Downing and Board Member Webber also made unfavorable comments regarding Mr. Ross's participation in bargaining. Further, Mr. Ross spoke at the February 2008 school board meeting, even though he was warned by Board President Downing and High School Principal Ziegler not to speak at the board meeting. Attorney Steele, on behalf of Dr. Homer, advised PSEA UniServ Representative Henning that Mr. Ross's plan to speak was "problematic" and that he should be dissuaded from speaking. Several days later, Mr. Ross was told by Principal Castor that he was "out of line" for speaking at the board meeting, that he should first come to her with any issues for discussion, that although other teachers sometimes speak to the school board, he was "not other people," and that he should watch what he was doing because the school board held an executive session to discuss his personnel file and history with the District prior to the school board meeting. After Mr. Ross assisted the Association membership in conducting a vote of no confidence in the principals and Dr. Homer, Mr. Ross met with Board President Downing to set up a meet and discuss session between the Association and the school board. Thereafter, Mr. Ross and five Association members met directly with the board regarding their concerns. Thus, not only does the record support the finding that the District was well aware of Mr. Ross's protected activity, but it also supports an inference that Dr. Homer, Attorney Steele and members of the school board did not look favorably on Mr. Ross's protected activity and were motivated by anti-union animus. Therefore, the District's allegation that it was unaware of Mr. Ross's protected activity is clearly meritless.

The District further asserts that the Hearing Examiner erred in relying on Perry County to impute the discriminatory motive of Attorney Steele to the District. The District argues that the present case is similar to the facts in Borough of Pottstown v. PLRB, 710 A.2d 641 (Pa. Cmwlth. 1998), appeal denied, 557 Pa. 631, 732 A.2d 616 (1998), in which the Commonwealth Court reversed the Board's decision and concluded that the union animus of a volunteer fire company chief could not be imputed to the borough. However, Pottstown is inapplicable because it involved a joint employer relationship and the Court determined that the volunteer fire company chief was not acting on behalf of the borough when he and the board overseeing the volunteer fire company terminated the employment of a paid driver for the fire company. Here, in contrast, Dr. Homer testified that she delegated full authority to Attorney Steele to conduct an investigation of the complaints against Mr. Ross, including the authority to recommend the level of discipline. Because Attorney Steele was given full authority by Dr. Homer to investigate the complaints against Mr. Ross and to recommend discipline, the District is liable for any discriminatory conduct committed by Attorney Steele in performing those duties. Perry County, supra. Indeed, PERA prohibits unfair practices such as discrimination by public employers and their agents or representatives. See 43 P.S. § 1201(a)(3). Thus, the Hearing Examiner did not err in imputing the discriminatory actions of Attorney Steele to the District.

The District additionally alleges that the Hearing Examiner erred by relying on Lehigh Area School District, supra, and concluding that the school board's independent review of the charges against Mr. Ross did not cure any alleged anti-union animus exhibited by Attorney Steele. In Lehigh Area School District, the district discharged a shop steward for receiving overtime pay for performing weekend building checks on a

building that the district no longer owned. The Board concluded that the district's discipline was motivated by anti-union animus because it did not discipline the shop steward until after he had engaged in protected activity, even though the district was aware that the steward was continuing to receive overtime pay for performing building checks for months before the discipline occurred. The Board further noted that the district's failure to follow its progressive discipline policy in discharging the shop steward also evidenced anti-union animus. In concluding that the facts in the present case are similar to those in Lehigh Area School District, supra, the Hearing Examiner stated as follows:

The District did not charge Ross for seven months after the March 7[, 2008] complaints were made. Subsequent to [the] time the complaints were made, Ross supervised the no confidence vote and made the meet and discuss presentation. During that time, Ross received an 80 of 80 perfect score on the DEBE annual evaluation from Castor, the building principal in the building where the complaints arose. In that same period, the labor solicitor had his conversations with the PSEA representative indicating that the charges were going to be dropped, then another conversation that they could be brought back up. In September, another school year began and the District allowed Ross to return to work, saying nothing to him about the allegations. The District still did not charge Ross until late October. Allowing this teacher to remain in the school for all this time casts doubt on the seriousness with which the District took the March 7[, 2008] allegations.

When the charges were brought to the school board in executive session, the solicitor made the unusual comment that "Ross has a target on his back," using a rifle gesture. He seemed happy as he made the remark, in the opinion of one board member. Steele testified that he did not recall making the remark. However, three board members testified that he made such a statement. The remark implies that Steele was treating Ross as hunted prey, not as a professional employe who was subject to an investigation.

Furthermore, the District's decision to charge Ross and then terminate him ignored its progressive discipline policy. Six year[s] earlier, the District gave Ross a written reprimand for sexual harassment. If the progressive discipline policy had been followed, the next disciplinary step would have been suspension, but the 2008 allegations jumped to the maximum discipline of termination.

(PDO, pp. 13-14).

The District argues that the facts in the present case are distinguishable from Lehigh Area School District in that the initiation of the sexual harassment investigation occurred before Mr. Ross participated in the no confidence vote and meet and discuss session. However, this argument fails to acknowledge the Hearing Examiner's finding that Attorney Steele advised the PSEA UniServ Representative (Ms. Henning) that the sexual harassment charges were dropped early in the investigation, but then indicated that they would be reinstated after Mr. Ross participated in the no confidence vote and the meet and discuss session with the school board. Thus, as in Lehigh, the timing of the District's decision to discipline Mr. Ross supports an inference of anti-union animus.

The District further argues that the Hearing Examiner erred by relying on the District's failure to follow its progressive discipline policy in finding that it engaged in discrimination against Mr. Ross. The District alleges that the facts underlying the sexual harassment charges did not require it to adhere to the progressive discipline policy. As the District points out, the sexual harassment policy allows for discharge for a single offense of sexual harassment. However, the Hearing Examiner also relied on numerous other factors in concluding that the Association established a prima facie case of discrimination, including increased contentiousness in contract negotiations in which Mr. Ross actively participated, statements by District officials showing hostility towards Ross, Ross's role as Association president in conducting the no confidence vote in the superintendent and principals, and the fact that the charges against Ross were dropped and

only revived after the no confidence vote. The Hearing Examiner also relied on a number of factors in discrediting the District's claim that Mr. Ross would have been discharged even in the absence of his protected activity, including the delay in bringing the charges, the fact that Attorney Steele advised the PSEA Uniserv Representative that the charges were going to be dropped and did not credibly explain why the charges were revived after the no confidence vote, the perfect evaluation that Ross received several months after the complaints were made against him, the fact that Ross was allowed to return to work in the next school year, and Attorney Steele's comment indicating that he was treating Ross as hunted prey. Therefore, even without reliance on the District's alleged failure to follow its progressive discipline policy, the overwhelming evidence as stated above supports the Hearing Examiner's finding of an unlawful motive and rejection of the District's proffered reason for its actions. We find no compelling reasons to reverse the Hearing Examiner's credibility determinations and therefore hold that the Hearing Examiner did not err in concluding that the District violated Section 1201(a)(3) of PERA.

The District finally alleges that the Hearing Examiner erred in concluding that the District committed an independent violation of Section 1201(a)(1) of PERA because the Association failed to establish such a violation. A finding of discrimination in violation of Section 1201(a)(3) of PERA will also support a finding of a derivative violation of Section 1201(a)(1). PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); PLRB v. Montgomery County Community College, 15 PPER ¶ 15038 (Final Order, 1984). Accordingly, it is unnecessary for the Board to reach the issue of whether the facts also support an independent violation of Section 1201(a)(1).

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions in part, dismiss the exceptions in part and make the Proposed Decision and Order as amended herein final.

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 Greenville Area School District are hereby sustained in part and dismissed in part, and the December 29, 2010 Proposed Decision and Order as amended herein is hereby 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 and James M. Darby, Member, this sixteenth day of August, 2011. 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.

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

GREENVILLE EDUCATION ASSOCIATION :  
PSEA/NEA :  
v. : Case No. PERA-C-08-462-W  
GREENVILLE AREA SCHOOL DISTRICT :

**AFFIDAVIT OF COMPLIANCE**

Greenville Area School District hereby certifies that it has ceased and desisted from its violations of Section 1201(a) (1) and (3) of the Public Employe Relations Act; that it has fully complied with the Proposed Decision and Order in this matter; that it has posted the Proposed Decision and Order and Final Order as directed and that it has served a copy of this affidavit on the Association 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