

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MINERSVILLE AREA EDUCATIONAL :
SUPPORT PERSONNEL ASSOCIATION, :
PSEA/NEA :
 :
v. : Case No. PERA-C-09-423-E
 :
MINERSVILLE AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On October 26, 2009, the Minersville Area Educational Support Personnel Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Minersville Area School District (District) alleging that the District violated Sections 1201(a) (1), (2), (3), (4) and (5) of the Public Employe Relations Act (PERA).

On November 17, 2009, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and February 5, 2010, in Harrisburg was scheduled as the time and place of hearing if necessary.

A hearing was necessary but was continued, on the motion of the Association without objection from the District, to March 18, 2010.

At the hearing, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Minersville Area School District is a public employer within the meaning of Section 301(1) of PERA. 43 P.S. § 1101.301(1). (N.T. 6)

2. The Minersville Area Educational Support Personnel Association, PSEA/NEA, is an employe organization within the meaning of Section 303 of PERA, 43 P.S. 1101.301(3). (N.T. 6)

3. The Association is the exclusive bargaining representative for a unit of the District's nonprofessional employes as certified by the Pennsylvania Labor Relations Board at Case No. PERA-R-4295-C. (N.T. 8, Joint Exhibit 1)

4. On January 12, 2009, the Association filed a charge of unfair practices against the District at Case No. PERA-C-09-7-E. The charge alleged that the District Superintendent M. Joseph Brady unilaterally changed the custodians' schedules without bargaining in retaliation for the Association's filing of a grievance over an earlier schedule change. (N.T. 7, 8, Exhibit A)

5. On April 20, 2009, the Board conducted a hearing on the charge, wherein the president and a member of the Association testified on behalf of the Association. (N.T. 7,8, Exhibit A)

6. Brady testified that he has been the District's superintendent for the past 34 years. He testified that as the District's chief executive officer he is responsible for overseeing the scheduling of maintenance and custodial workers and for seeing that all District buildings are safely covered. To carry out these responsibilities, he regularly walks through all the District's buildings. (N.T. 12)

7. In the summer of 2009, before the charge at Case No. PERA-C09-7-E was decided, several custodians approached Brady on his regular walks through the District's buildings with questions regarding shift assignments and the pending unfair practice litigation. (N.T. 11-14)

8. Rather than answer the employees' individual questions, Brady decided to send a memorandum to all the custodians. (N.T. 14-15)

9. On July 9, 2009, Superintendent Brady issued the following memorandum to each custodial staff member:

TO: Custodial Staff

FROM: M. Joseph Brady, Superintendent
Minersville Area School District

DATE: July 9, 2009

SUBJECT: Shift Assignments

In the interest of keeping the record straight, these facts need to be understood:

1. The custodial union, your representative, filed an official complaint with the Pennsylvania Labor Relations Board asserting that the Superintendent cannot legally change shift assignments.
2. This complaint, initiated by local President James Quinn, resulted in a hearing at which time your president along with Bob Brown and a union spokesperson stated changing shifts violated state labor law.
3. The outcome of this complaint is still pending. Should the arbitrator rule as requested by your union you will never see personnel changed to day shift in the summer or holidays.
4. Complaining that the district implemented the action your leadership demanded makes one wonder who is speaking for the majority of the membership.

(N.T. 7, 8, 15, Exhibit B. Underlining in original.)

DISCUSSION

The Association's charge of unfair practices alleges that the District violated Sections 1201(a)(1), (3), (4) and (5) of PERA on July 9, 2009, when Superintendent M. Joseph Brady sent a memorandum directly to bargaining unit members threatening them with the loss of summer work and demeaning their leaders. The Association alleges that he made these statements because the Association filed an earlier charge of unfair practices.

The Association, as the complainant, bears the burden of proving the elements of the alleged violations by substantial and legally credible evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A. 2d 1069 (1977). Substantial evidence means evidence that does more than just create a suspicion of the existence of the fact necessary to establish each element of the unfair practice charge. Township of Upper Makefield, 10 PPER ¶ 10299 (Nisi Order of Dismissal, 1979).

The first charge to discuss is the allegation that Superintendent Brady's memorandum violated Section 1201(a)(1) of PERA, which prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act." 43 P.S. 1101.1201(a)(1). An independent violation of Section 1201(a)(1) of PERA occurs, "where in light of the totality of the circumstances the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v.

Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Under this standard, the complainant does not have to show improper motive or that any employes have in fact been coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985); Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER ¶ 97 (Final Order, 2004).

In the present case, the District argues that Superintendent Brady did not intend to interfere, restrain or coerce employes in the exercise of their PERA rights. Superintendent Brady testified that he was simply responding to custodians' questions about a pending unfair practice charge alleging a unilateral change to their work schedules. Brady testified that the custodians' questions came directly to him and that he did not seek out the custodians. The custodians asked him questions when they saw him on his regular walks in the buildings. Having heard their questions, Brady then decided that his best course of action was not to answer each custodian individually, but rather to send a single memorandum to all custodians.

However, a reading of the memorandum is convincing that Superintendent Brady did more than he claimed. In the third paragraph of the memorandum, the superintendent threatened the employes by stating that if the Association got the remedy it sought, the members "will never see personnel assigned in the summer." (Underlining in original.) This prediction of future summer assignments is a threat to remove employment opportunities. It is retaliatory in tone and substance. The Board has found a similar threat to have violated Section 1201(a)(1) of PERA. See, Clearfield County Association of Professional Employes v. Clearfield County, 27 PPER ¶ 27087 (Final Order, 1996). To an objective observer, reviewing the totality of the particular circumstances of the case, that threat from Superintendent Brady could reasonably be viewed as having a tendency to coerce the employes in the exercise of their rights, specifically the right to file grievances and unfair practice charges.

In the fourth paragraph, the memorandum calls into question the legitimacy of the Association's leaders by questioning if they "were speaking for a majority of the membership" when they filed the charge of unfair practices. An employer's remarks that demean the status of an employe organization have the tendency to coerce reasonable employes in the exercise of the right to be represented by an employe organization of their own choice. See, Commonwealth of Pennsylvania, Department of Military Affairs, 35 PPER ¶ 94 (Proposed Decision and Order, 2004); City of Scranton, 40 PPER ¶ 55 (Proposed Decision and Order, 2009), 40 PPER ¶ 136 (Final Order, 2009).

Therefore, regardless of Superintendent Brady's explanations of the memorandum's factual background and of his intentions in sending the memorandum, the statements in Brady's July 9, 2009 memorandum violate Section 1201(a)(1) of PERA.

The Association has also charged that Superintendent Brady's memorandum violated Sections 1201(a)(3), (4) and (5) of PERA. On the specific facts of this case, the Association has not proven that the District violated these sections of PERA. Accordingly, those parts of the charge will be dismissed.

CONCLUSIONS

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

1. That the District is a public employer within the meaning of Section 301(1) of PERA.
2. That the Association is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the District has committed unfair practices in violation of Section 1201(a)(1) of PERA.

5. That the District has not committed unfair practices in violation of Section 1201(a)(3), (4) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act.

2. Take the following affirmative action:

(a) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place in each of the District's buildings that is readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days.

(b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(c) Serve a copy of the attached affidavit of compliance upon the Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this nineteenth day of January, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner