

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION,  
PSEA/NEA

v.

READING SCHOOL DISTRICT

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Case No. PERA-C-10-377-E

**PROPOSED DECISION AND ORDER**

On October 13, 2010, the Reading Education Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Reading School District (District) violated Section 1201(a)(1), (2), (3), (4) & (5) of the Public Employe Relations Act (PERA) when it cancelled two meetings with two different administrators scheduled two months apart.<sup>1</sup>

On November 12, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on Monday, March 7, 2011, in Reading, Pennsylvania. After several granted continuances at the request of the parties, the hearing was held on November 14, 2011. During the hearing, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 4).
3. The Superintendent's Advisory Council (SAC) is a meeting between the Union's executive staff and the District Administrators. These meetings are scheduled once per month and are a contractual protocol to address and resolve labor related issues before complaints or grievances are filed. (N.T. 6-7).
4. Julie Vicente was the Director of Secondary Curriculum/Secondary Education at the District in July 2010. (N.T. 9).
5. In July 2010, Robert H. Miller, Jr., was the Union President. Mr. Miller and Ms. Vicente met frequently as part of an unwritten protocol to resolve conflicts and develop fact finding at the lower levels of District Administration before the monthly SAC meeting. (N.T. 6-7, 9-11).
6. On July 19, 2010, Mr. Miller met with Ms. Vicente's secretary to schedule a meeting with Ms. Vicente, as was the practice, regarding secondary curriculum staffing and the payment of stipends before the end of the school year. The meeting was scheduled for July 22, 2010, and Mr. Miller submitted an agenda for the meeting. (N.T. 9-14).
7. On July 22, 2010, when Mr. Miller and Russell James Diesinger, the High School Vice President for the Union, appeared for the meeting, Ms. Vicente cancelled the meeting and offered to hold the meeting via telephone conference. (N.T. 14-15).
8. Mr. Miller believes that telephone conversations at the administration building are recorded. Mr. Miller did not want his conversation with Ms. Vicente recorded. (N.T. 15).

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<sup>1</sup> At the hearing, the Union withdrew its claims under Section 1201(a)(2). (N.T. 3).

9. After Ms. Vicente cancelled the July 22, 2010 meeting and offered to conduct the meeting via teleconference, Mr. Miller did not attempt to meet with Ms. Vicente again on those agenda issues. Ms. Vicente left District employment sometime thereafter. (N.T. 20-21).

10. Frank Vecchio was the Interim Superintendent and became the Acting Superintendent on January 1, 2011. He retired from the District on June 30, 2011. Mr. Vecchio and Mr. Miller had regular standing weekly meetings scheduled for Wednesdays at 1:00 p.m., unless conflicts or Mr. Vecchio's duties required cancellation. Mr. Vecchio wanted to enhance and increase communications between the Superintendent's Office and the Union. (N.T. 16-17, 21, 24, 26-28).

11. Mr. Vecchio did not intentionally cancel meetings to avoid Mr. Miller. There was a lot happening in the District in the summer and fall of 2010. Periodically, Mr. Vecchio cancelled meetings due to the demands of his position. When Mr. Vecchio had to cancel a meeting with Mr. Miller, he would reschedule for that week or the next week and sometimes they just agreed to meet for breakfast or lunch or just ride together in the truck to investigate Mr. Miller's on-site concerns. (N.T. 28-30).

12. On September 15, 2010, Mr. Miller and Mr. Vecchio had one of their regularly scheduled weekly meetings. Mr. Vecchio cancelled that meeting. Mr. Vecchio and Mr. Miller met the following week to address the issues. (N.T. 16-17, 25).

13. Meetings with Ms. Vicente and Mr. Vecchio were all in addition to the SAC meetings. (N.T. 22).

## **DISCUSSION**

In its charge, the Union claims that, when Ms. Vicente cancelled the July 22, 2010 meeting with Mr. Miller and offered a telephone conference instead, the District was "denying personal access to union leadership in order to kill and abort an[y] meaningful relationship between the union and the administration." (Specification of Charges ¶3-7). The Union further alleged that the District violated PERA when Mr. Vecchio cancelled a September 15, 2010 meeting.

### **1. Discrimination**

In a discrimination claim under Section 1201(a)(3) and (4), the complainant has the burden to establish following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew that the employee engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employee's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). There is no evidence of unlawful motive on this record. Therefore, the Union's discrimination claims under Section 1201(a)(3) and (4) are dismissed.

### **2. Bargaining**

Section 702 of PERA provides as follows:

Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment . . . . A public employer violates its duty to bargain when it refuses to meet and bargain in good faith.

43 P.S. § 1101.702. The collective bargaining agreement between the Union and the District contains a provision requiring the parties to hold monthly meetings, called SAC meetings, to address issues arising under the contract before they become grievances or complaints. (F.F. 3). Accordingly, the District has a contractual obligation to participate in the SAC meetings, as well as the concomitant obligation to facilitate the Union's participation in those meetings by exchanging information before the SAC meetings.

In this case, the District participated in lower-level meetings with the Union leadership in addition to the contractually required SAC meetings to exchange information and resolve disputes before the SAC meetings. Ms. Vicente met frequently with Mr. Miller as part of this unwritten protocol. Additionally, The Interim Superintendent, Mr. Vecchio had been holding weekly meetings with Union President Miller for a long time by September 2010. The District's willingness to meet regularly and often with the Union demonstrates that it, not only complied with its statutory and contractual bargaining obligations, but also cooperated fully with the Union. The question presented, however, is whether the District violated its contractual or statutory duty to bargain in good faith by cancelling two scheduled, lower-level labor-management meetings in the manner in which it was done here. I conclude that the District did not violate its bargaining obligations.

Clearly, the demands of managing a school district in a third class city presents many challenges to administrators, and a reasonable person would accept that cancelling scheduled labor-management meetings will be necessary from time to time to address the exigencies of operating such a large school district. Ms. Vicente's meetings and Mr. Vecchio's weekly meetings were a natural extension of the District's contractual bargaining obligations which enhanced communications between District Administration and the Union prior to SAC meetings. These preliminary meetings served as fact finding for lower level resolution. Although the lower-level meetings became part of the terms and conditions of employment, PSCOA v. Commonwealth, Muncy SCI, 41 PPER 67 (Proposed Decision and Order, 2010), the necessary, foreseeable, unintentional and infrequent cancellation of these meetings would not violate the District's bargaining obligations.

The record shows that, when Ms. Vicente cancelled the July 22, 2010 meeting with Mr. Miller, she offered to hold the meeting via teleconference, which was unacceptable to Mr. Miller because those telephone calls are allegedly recorded.<sup>2</sup> However, Mr. Miller also testified that he did not attempt to address these issues in an in-person meeting with Ms. Vicente again before she left District employment. Given the regular meetings scheduled and held between Ms. Vicente and Mr. Miller, it is unreasonable to conclude that the cancellation of the July 22, 2010 meeting violated the District's bargaining obligations.

Mr. Vecchio and Mr. Miller had regular, standing weekly meetings scheduled for Wednesdays at 1:00 p.m., unless conflicts or Mr. Vecchio's duties required cancellation. Mr. Vecchio did not intentionally cancel meetings to avoid Mr. Miller. There was a lot happening in the District in the summer and fall of 2010, requiring the periodic cancellation of meetings due to the demands of being Interim Superintendent. When Mr. Vecchio's responsibilities to the District required him to cancel a meeting with Mr. Miller, he would either reschedule for that same week or the next week; sometimes they just agreed to meet for breakfast or lunch or even ride together in the truck to investigate Mr. Miller's on-site concerns.

On September 15, 2010, Mr. Miller and Mr. Vecchio had one of their regularly scheduled weekly meetings. Mr. Vecchio cancelled that meeting, but he met with Mr.

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<sup>2</sup> There was no testimony offered to establish whether the alleged recording function could be disabled.

Miller the following week to address the issues. In this context and on this record, the District met its statutory and contractual bargaining obligations and demonstrated a conscious effort to maintain an open, healthy and fruitful bargaining relationship with the Union. The two cancellations at issue here did nothing to interfere with bargaining or the bargaining relationship.

Accordingly, the District did not commit a bargaining violation under Section 1201(a)(5).<sup>3</sup>

#### CONCLUSIONS

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

1. The District 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 District has not committed unfair practices within the meaning of Section 1201(a)(1) either independently or derivatively.
5. The District has not committed unfair practices within the meaning of Section 1201(a)(3) or (4).
6. The District has not committed unfair practices within the meaning of Section 1201(a)(5).

#### 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 final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-third day of February, 2012.

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<sup>3</sup> The Union did not allege an independent violation of Section 1201(a)(1).

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner