

6. In order to deal with this issue, Shuman Center hired Yvette Carey to be its Administrative Manager on February 17, 2009. Carey, a social services professional, with bachelors and masters degrees in management, had spent most of her career with responsibility for meeting DPW inspections (N.T. 127-128)
7. The most serious problems found by the DPW during its audit were in the Admissions Department (N.T. 128-129).
8. In January, 2011, because the incumbent Admissions Department Supervisor failed to meet performance standards, Carey replaced him with Christine Dillard. (N.T. 136).
9. Carey testified she believed that Dillard would be effective as the Admissions Department Supervisor because she was familiar with the Shuman building, had good computer skills and thorough knowledge of Shuman's policy and procedures (N.T. 136-137)
10. Because of her new position, Dillard's shift was changed from her afternoon shift of 3 p.m. to 11 p.m. to a new shift, 11 a.m. to 7 p.m., which enabled Ms. Dillard to overlap two shifts of the admissions employees she supervised. Admissions is the only supervisor with a shift that overlapped the other shifts. (N.T. 137, County Exhibit 7)
11. In her new position, Dillard supervised 12 youth care workers. (N.T. 263)
12. From the start, Carey gave direction and feedback to Dillard on her job duties and performance and Shuman's expectations for the Admissions Department. Carey met nearly monthly with Dillard in supervisory conferences to provide Dillard with evaluation, suggestions, guidance and direction on how to effectively perform her responsibilities. (N.T. 139)
13. Ms. Carey testified that, from the beginning, Christine Dillard, "struggled" to meet her new responsibilities (N.T. 139)
14. On January 17, 2011, in Dillard's first evaluation and Supervisory Conference, Carey informed her that she was falling short of expectations. A major problem was her tendency to "over relate" to subordinates, her reluctance to be the "boss" to ensure employees were meeting their responsibilities. Examples of these problems were Dillard's failing to prevent employees from eating in the department, from surfing the internet during work hours and from wearing unprofessional attire. She also failed to make sure that staff was individually and continually receiving training and direction in Shuman's job expectations regarding filing of documents, expungement of records, and updating of file information on a daily basis (N.T. 139, 141-143, County Exhibit 3)
15. On February 18, 2011, a second supervisory conference noted that "mistakes are being made when entering resident information, particularly important person segment." Carey explained to Dillard the serious adverse consequences to children from missing or inaccurate information and counseled Dillard to give her staff the necessary training for these issues. (N.T. 145)
16. On March 17, 2011, at another supervisory conference, Carey informed Dillard of the same problems and more. (N.T. 146-149, County Exhibit 3)
17. On May 25, 2011, due to Dillard's continued deficiencies, Carey issued a "Disciplinary Action Form" indicating tha further failure to comply would "result in disciplinary action and/or dismissal." (N.T. 141, County Exhibit 3).
18. On June 7, 2011, Carey gave Dillard her next supervisor conference. Carey noted to Dillard that the staff training she was supposed to have done had not been completed. (N.T. 153, County Exhibit 3)

19. One kind of training that had not been done was in the use of a "wand" to conduct searches of juvenile residents. (N.T. 153)
20. In August, Carey and her superiors at Shuman conducted a mock audit of Admissions in preparation for a DPW inspection. The mock audit revealed that the problems in Admissions were continuing. Management noted that there were violations on August 10, 11 and 29. (N.T. 163)
21. In August, 2011, when presented with the mock audit results, Dillard was very argumentative with Carey and showed an attitude that was not cooperative. (N.T. 171)
22. Dillard was extremely frustrated with this meeting and then went to the office of Deputy Director Lynette Drawn-Williamson and said that she wanted to be transferred out of Admissions. (N.T. 171, 277-278)
23. On September 13, 2011, Jeremy Packer, Shuman's security manager, discovered that Dillard allowed a resident who was released from court to re-enter Shuman in street clothes to retrieve his belongings. This was contrary to procedures, which require a resident to be in uniform while on the floor and, in this instance, wait in the reception area while someone else retrieve his clothes. (N.T. 65, 122, Union Exhibit 21)
24. On or about September 19, Carey decided that a change of supervisors was needed in Admissions and recommended this action to Deputy Director Lynette Drawn-Williamson that Dillard be replaced by Desire Hickman. She also discussed this with the Director of Shuman Center, Jack Simmons. Carey's superiors accepted the recommendation. (N.T. 172)
25. Prior to September 19, Dillard filed three grievances. They were filed on August 22, September 6 and September 14. (N.T. 27, 46, 62, Union Exhibits 6, 13 and 20)
26. On October 2, 2011, Dillard's transfer from Admissions to her former position of Childcare Supervisor became effective. On the same date, Desire Hickman became the new Admissions Supervisor. (N.T. 173, 179 County Exhibit 7)

DISCUSSION

The Union's charge of unfair practices alleges that the County violated sections 1201(a)(1) and (3) of PERA when administrators at the Shuman Juvenile Detention Center transferred Christine Dillard from the position of admissions supervisor to her former position of child care supervisor and changed her shift from a Monday to Friday 11 a.m. to 7 p.m. schedule to a split shiftschedule of Thursday p.m., Friday a.m, Saturday a.m., Sunday p.m., Monday p.m. with Tuesdays and Wednesdays off.

In order to sustain a charge of discrimination under Section 1201(a)(3) of PERA, the complainant must prove that the employe engaged in protected activity, that the employer was aware of that protected activity, and that but for the protected activity the adverse action would not have been taken against the employe. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977). The complainant must establish these three elements by substantial and legally credible evidence. **Shive v. Bellefonte Area Board of School Directors**, 317 A.2d 311 (Pa. Cmwlth. 1974). **St. Joseph's Hospital, supra**.

The complainant proved the first two elements of the **St. Joseph's** test. First, the complainant proved that Dillard engaged in protected activity. She filed three grievances in a short period of time, on August 22, September 6 and September 14, 2011. Filing of a grievance is a protected activity under PERA. **Montrose Area Education Association v. Montrose Area School District**, 38 PPER 127 (Final Order, 2007). Second, the supervisors knew of her filing grievances.

The dispute is over the third part of the test, whether the employer was motivated by anti-union animus when it removed Dillard from her position and her shift. The third part of the test for discrimination requires proof of employer motivation. The "motive creates the offense" under section 1201(a)(3). **PLRB v. Stairways, Inc.**, 425 A.2d 1172, 1175 (Pa. Cmwlth. 1981), quoting **PLRB v. Ficon**, 434 Pa. 383, 388, 254 A.2d 3, 5 (1969). An overt display of anti-union animus by an employer may support a finding that the employer was discriminatorily motivated. **City of Reading v. PLRB**, 568 A.2d 715 (Pa. Cmwlth. 1989). An employer does not violate section 1201(a)(3) if it takes an employment action for a nondiscriminatory reason. **Kennett Consolidated School District**, 37 PPER 89 (Final Order 2006).

Since improper motivation is rarely admitted and since the decision makers who are accused of anti-union motivation do not always reveal their inner-most private mental processes, the Board allows the fact finder to infer anti-union animus from the record as a whole. **PLRB v. Montgomery County Geriatric and Rehabilitation Center**, 13 PPER ¶ 13242 (Final Order, 1982); **St. Joseph's Hospital**, *supra*. However, an inference of anti-union animus must be based on substantial evidence consisting of "more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." **Shive**, *supra* at 313.

In **Child Development Council of Centre County (Small World Day Care Center)**, 9 PPER ¶ 9188 (Final Order, 1978), the Board stated: There are a number of factors the Board considers in determining whether anti-union animus was a factor in the layoff of the Complainant: the entire background of the case, including any anti-union activities by the employer; statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge, or layoff, of the adversely affected employe, the effect of the discharge on unionization efforts-for example, whether leading organizers have been eliminated; the extent to which the discharged or laid-off employe engaged in union activities; and whether the action complained of was "inherently destructive" of important employe rights." 9 PPER 9188, at 380.

The Board has also noted that the timing of the adverse action against the employees would be a factor that could be used to infer that anti-union animus was the motivation for the employer action. **PLRB v. Berks County (Berks Heim County Home)**, 13 PPER ¶ 13277 (Final Order, 1982).

In this case, the Association argues that animus can be inferred from two factors: first, the close timing between Dillard's filing of three grievances on August 22 and September 6 and 14, 2011 and the County's September 19 transfer and shift change; and second, the County's insubstantial explanation for the transfer.

The Union has proven the close timing between Dillard's three grievances and the transfer. However, close timing alone is an insufficient basis on which to infer that anti-union animus is the reason for the adverse employee decision. **Pennsylvania State Park Officers Association v. PLRB**, 854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005).

As for the Union's argument that the County has offered an insubstantial reason for the adverse assignment, the Union contends that the County's stated reasons for the transfer that are shallow. The Union contends that the County's references to her work performance have never risen to the level of discipline and therefore, Dillard has never had the chance to scrutinize them as part of a grievance procedure.

The County presented evidence to show that it had more than an "insubstantial reason" for the reassignment of duties and shifts. The County presented testimony from four witnesses: Yvette Carey, administrative manager in Admissions and Dillard's immediate supervisor; Marc Booker, the training manager at Shuman Center; Jeremy Packer, security manager at Shuman, and Lynette Drawn-Williamson, the Deputy Director of Shuman.

The substance of the County witnesses' testimony is that the Center's management team had reached the conclusion that it was necessary to transfer Dillard from the Admissions Unit so that Shuman Center would be in compliance with the Pennsylvania Department of Public Welfare's standards for juvenile facilities. Maintaining the DPW license was crucial to Shuman's existence. This effort to maintain compliance status before the County hired Dillard. Dillard was not the first supervisor the County transferred; the County was forced to transfer Dillard's predecessor because of poor performance.

The County's decision to transfer Dillard did not come without prior employer expressions of concern about her performance. In the nine months that Dillard held the position of Admissions Supervisor, her supervisor, Yvette Carey, continually informed Dillard that she was not performing her job according to expectations and warned her of discipline if she continued to fail to comply with her responsibilities. Supervisors met with Dillard on at least five different occasions before August, 2011, for the purpose of rectifying Dillard's work deficiencies. These meetings resulted in either counseling, advice or warnings.

Carey testified that it was not Dillard's filing of grievances that motivated the Shuman Center management to transfer her to her old position and to a new shift. Carey's supervisor, Lynette Drawn-Williamson, Deputy Director of Shuman, corroborated her testimony that it was not Dillard's filing of grievances that was the reason the County transferred her. She and Carey testified credibly that they were motivated by a desire to find a supervisor who could meet their objectives of overseeing the important Admissions Unit at Shuman, a unit facing the threat of losing its DPW license to care for juveniles.

The Union argues that Dillard's conduct had not reached the level of a disciplinary matter that the Union could grieve and scrutinize. However, the County may transfer an employe for its own managerial reasons and is not under an obligation to wait until an employe has to be disciplined to transfer the employe. The present case is one where an employer realizes that the employe is supervising a unit that continues to show errors in admissions procedure and policy and the employer decides to try another supervisor in the position. Also, it must be noted that in August, the month before the transfer, Dillard herself, after an acrimonious meeting with Deputy Director Drawn-Williamson, requested a transfer out of Admissions.

Based on this evidence, the County's reason for the transfer is not an insubstantial reason, as the Union argues. It will not be the basis for inferring that anti-union discrimination motivated Carey's recommendation and the Director Simmons' acting on the recommendation.

The Union has not proven the third part of the test for proving anti-union discrimination. The section 1201(a) (3) charge will be dismissed.

As for the Union's allegation that the County's transfer violated section 1201(a) (1) of PERA, this charge will also be dismissed. The Union evidence that could meet the "tendency to coerce" test is outweighed by the County evidence that the Shuman Center management transferred a first level supervisor for legitimate business reasons that went directly to the Shuman Center's ability to stay in business. The section 1201(a) (1) 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 Allegheny County, Shuman Juvenile Detention Center is a public employer within the meaning of Section 301(1) of PERA.
2. That the Joint Bargaining Committee of SEIU Local 68 and Local 1199P 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 County has not committed unfair practices in violation of Sections 1201(a)(1) and (3) 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 charge is dismissed and the complaint is rescinded.

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 twenty-seventh day of November, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner