

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRANKLIN COUNTY CAREER AND :
TECHNOLOGY CENTER EDUCATION :
ASSOCIATION :
 : Case No. PERA-C-11-426-E
v. :
 :
FRANKLIN COUNTY CAREER AND :
TECHNOLOGY CENTER :

PROPOSED DECISION AND ORDER

On December 15, 2011, the Franklin County Career and Technology Center Education Association (Complainant or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Franklin County Career and Technology Center (Respondent or Center), alleging that the Center violated Sections 1201(a) (1), (2), (3) and (5) of the Public Employe Relations Act (PERA).

On January 4, 2012, 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 May 10, 2012, in Harrisburg was scheduled as the time and place of hearing if necessary.

A hearing was necessary, and was held as scheduled. A second day was held on June 27, 2012. At the hearings, the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The record was kept open for the submission of a September 5, 2012 deposition of an out of state witness who was unable to attend the hearing, Roberta Johnston, formerly the Supervisor of Career and Technical Education at the Center.

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 Franklin County Career and Technology Center is a school entity and public employer that provides vocational and technical education to students from five sending school districts in Franklin County: Chambersburg, Shippensburg, Greencastle-Antrim, Waynesboro, and Tuscarora. (N.T. 14)
2. The Franklin County Career and Technology Center Education Association is the exclusive representative of the professional employees at the Center. The unit is comprised of approximately 28 professional employees. (N.T. 16)
3. High school age students attend the Center for one semester each academic year, generally for three years. During that semester, the students receive all of their vocational technical education and spend the entire day at the Center. Students who are enrolled in the Center's program spend the other academic semester of each school year at their home school, where they receive all of their academic education. (N.T. 15)
4. The Center has approximately 380 students enrolled each semester.
5. There have only been three grievances filed by the Association against the Center since 1996. (N.T. 16)
6. On February 5, 2009, the Association filed a grievance on behalf of two guidance counselors, Leslie Fickes and Brenda Kimple, and the nurse at the

Center, Ms. Domenick, claiming that the Center was requiring its guidance counselors and nurse to provide services to Chambersburg Area School District students during their "academic semester" in Center classroom and office space the District rented. The Association alleged that this assignment was outside the scope of their responsibilities as employees of the Center. (N.T. 19-20, Association Exhibit 1, page 4)

7. Leslie Fickes was the President of the Association when the grievance was filed and was also one of the employees affected by that grievance. (N.T. 20-21)
8. In 2011, Fickes was a member of the Association's negotiating team for the current CBA. (N.T. 166)
9. On September 27, 2010, Arbitrator Timothy J. Brown handed down an Opinion and Award in the grievance. Brown's award granted the grievance and directed the District to cease and desist from assigning work to the guidance counselors and nurse relating to any Chambersburg Area School District academic students. The award also provided that, in the event Chambersburg students were assigned to the Center's guidance counselors and nurse, the guidance counselors and nurse were to be paid the prorated hourly rate for the services provided in addition to their negotiated salaries. (N.T. 21, Association Exhibit 2)
10. Before the grievance, Chambersburg Area School District was the only District which had its non-Career Center students receiving guidance and nursing services from Center employes. (N.T. 180)
11. On June 9, 2011, Center administrators met with the superintendents of three of the five sending school districts to discuss several items. Center Administrative Director B. Keith Yohn attended the meeting. At the end of the meeting, Dr. Joseph Padasak, superintendent of Chambersburg Area School District, lead a discussion suggesting that the guidance counseling staff at the Center should be reduced from two counselors to one counselor, and that the sending school districts could pick up the difference by providing counseling at the home schools for student' social and emotional needs. (N.T. 200-203, Center Exhibit 1)
12. The change in counseling services available at the Center suggested by Chambersburg Superintendent Padasak was allegedly made to free up additional funds for future new programs at the Center. (N.T. 202-203, Center Exhibit 1)
13. On or about June 27, 2011, Center administrators drafted a resolution adopting a plan for "the alteration and curtailment" of the guidance counseling program at the Center. (N.T. 40, 44, Association Exhibit 5)
14. The resolution pointed out that the current counselor-to-student ratio in Franklin County is 1:185 whereas the ratios of the sending districts went from 1:294 at Waynesboro to 1:400 at Tuscarora. Chambersburg, Dr. Padasak's district, had a ratio of 1:316. (N.T. 40, 44, Association Exhibit 5)
15. On July 21, 2011, the Center's Joint Operating Committee (JOC) held a special meeting and adopted the resolution curtailing the guidance program at the Center. Under the resolution, the Center's counseling services were to be limited "to those directly related to vocational-technical program, including academic and career counseling, but excluding routine and non-routine social and emotional counseling, which will be provided on an as-needed basis by the home schools." (N.T. 40, 44, Association Exhibit 5)
16. The administration and the members of the Center's JOC knew that a guidance counseling position would be eliminated and a guidance counselor would be furloughed as a direct result of the resolution adopted July 21, 2011.

17. Before the Center could curtail its guidance program it needed the approval of the Department of Education. By letter dated July 21, 2011, the resolution adopted by the JOC was forwarded to the Department of Education "seeking approval from the Pennsylvania Department of Education for alteration or curtailment" of the guidance counseling program. The Center's request to the Department stated: "In fact, providing only academic and career counseling will better prepare career and technical students for careers and post-secondary education choices." (N.T. 50, 51, Association Exhibit 7)
18. On August 16, 2011, the Department of Education sent correspondence by electronic mail to the director of the Center approving the curtailment and alteration of the guidance counseling program at the Center. The Department approval stated that the curtailment was justified under Section 1124(2) of the School Code. (N.T. 51, 54, Association Exhibit 8)
19. Immediately upon receiving the approval letter from the Department of Education, the Center scheduled a special meeting of the JOC for 6:00 p.m. that same day, August 16, 2011. The special meeting had a single item of business on the agenda: Approving the suspension of Leslie Fickes, effective August 26, 2011 and placing her on paid administrative leave for August 17, 23 and 24, 2011. (N.T. 52, 54, Association Exhibit 9)
20. The 2011-2012 school year was scheduled to start August 17, 2011.
21. The Center did not provide the Association or Fickes with any advance notice that it was intending to alter its guidance program in a fashion that would eliminate a guidance position and result in Fickes' furlough. (N.T. 51-52)
22. The Association did not have notice that the Center had requested approval from the Department of Education to curtail its guidance program, which would lead directly to the furlough of one guidance counselor. (N.T. 51-52)
23. The Association did not have any notice that a special meeting was going to be held on August 16, 2011, or that the special meeting would result in Fickes' furlough as a result of the curtailment of the guidance program. (N.T. 53)
24. Fickes' first communication from the Center that her position had been eliminated, and she had been suspended, came in a phone call from Administrative Director Yohn after the August 16, 2011 special meeting of the JOC.
25. On August 22, 2011, the Association, acting through Marcia Bender, PSEA UniServ representative, notified Administrative Director Yohn that Fickes' furlough was in error. She stated that there was another position at the Center, Dean of Students, that Fickes was qualified to perform, and that she had a right to be transferred into that position rather than being furloughed because that position was then being filled by Judy Ann Kell, a person with less seniority than Fickes. (N.T. 54, 55, Association Exhibit 10)
26. On August 22, 2011, the Association also advised the Center that, because Fickes' furlough was the result of a change in program, whereby the sending districts took back certain services that had been previously been provided by the Center, Fickes was entitled, pursuant to the Transfer Between Entities Act, to be placed in a pool of available employees with preferential hiring rights in all of the sending districts. (N.T. Association Exhibit 10)
27. The Transfer Between Entities Act, 24 P.S. § 11-1113(a) provides in pertinent part:
 - (a) When a program or class is transferred as a unit from one or more school entities to another school entity or entities, professional employees who were assigned to the class or program immediately

prior to the transfer and are classified as teachers as defined in section 1141(1) and are suspended as a result of the transfer and who are properly certificated shall be offered employment in the program or class by the receiving entity or entities when services of a professional employe are needed to sustain the program or class transferred, as long as there is no suspended professional employe in the receiving entity who is properly certificated to fill the position in the transferred class or program.

(N.T. 54, 55)

28. On August 22, 2011, PSEA Uniserv Representative Marcia Bender notified Administrative Director Yohn of his responsibilities to Fickes under the Transfer Between Entities Act.

"Furthermore, if there would not be an available position in a receiving entity, Leslie Fickes would be placed in a pool for employment whereby the receiving entities must draw from that pool when a position becomes available in the area(s) of certification Leslie hold before hiring anyone else. It is the responsibility of the Franklin County Career & Technology Center to notify the school districts of Leslie's availability."

(N.T. 54, 55, Association Exhibit 10)

29. PSEA's Bender also sent letters to the sending superintendents of Fickes' availability for a position. She reminded them of the Transfer Between Entities Act. (N.T. 55, 61, Association Exhibit 11)
30. On August 24, Center Administrative Director Yohn sent letters to all the superintendents of the sending districts informing them of Fickes' suspension and her availability to the districts, telling them to "feel free" to contact her if a vacancy should arise and asking that they make known her availability and her certifications for vacancies. (N.T. 59, 60, Association Exhibit 12)
31. Chambersburg Area School District, one of the five sending districts, contributes 40-45% of the Center's budget. It has three seats on the nine member Center Board. (N.T. 179)
32. The Chambersburg Area School District Superintendent Dr. Padasak made the recommendation to suspend Fickes. (N.T. 200-203, Center Exhibit 1)
33. Judy Ann Kell and Leslie Fickes were both hired by the Center at a meeting of the JOC held May 31, 2007. (N.T. Association Exhibit 13)
34. At the May 31, 2007 meeting Leslie Fickes was hired as a Guidance Counselor, a professional position, pursuant to the teachers' CBA. (N.T. 99-101, Association Exhibit 13)
35. At the May 31, 2007 meeting Judy Ann Kell was hired as a vocational Instructional Assistant, a non-professional support position not covered by the Teacher's CBA. (N.T. 99-101, Association Exhibit 13)
36. Kell later moved into a position called Student Management Assistant, a non-professional position that was developed through a series of personnel changes at the Center. (N.T. 256-261)
37. The 2010-2011 Student Handbook contains a list of Center personnel but contains no reference to Dean of Students. (N.T. 249, Center Exhibit 10)

38. The 2011-2012 Faculty Handbook contains no reference to Dean of Students but does contain a reference to Student Management Assistant and identifies the occupant of that position as Judith Kell. It also refers to Brad Rideout as Instructional Assistant. (N.T. 262-23, 289)
39. The 2011-2012 Faculty Directory has no reference to Dean of Students. (N.T. 251)
40. The 2011-2012 Center telephone directory identifies Kell as Student Management Assistant. (N.T. 252)
41. A website page purporting to be the Center's personnel page was not the result of input or approval from Yohn, Superintendent of Record Hoover, the Center's professional advisory committee or the JOC. (N.T. 262-263, 289)

DISCUSSION

On August 16, 2011, the day before Leslie Fickes was to begin her fifth year as a guidance counselor for the Franklin County Career and Technology Center, the Center's Administrative Director notified her that she had been furloughed as part of a PDE approved curtailment of services. This surprising development caused her to seek the aid of the Association, which filed the present charge of unfair practices. The Association contends that the furlough decision was an act of retaliation for Fickes' involvement as the Association president in successfully pursuing a grievance in 2009. The Association alleges that the Center violated Sections 1201(a)(1), (2), (3) and (5) of PERA.

The Association's main cause of action is the allegation that the Center violated Section 1201(a)(3), that the Center's furlough of Fickes was an act of discrimination motivated by Fickes' engaging in protected activity. 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 Fickes engaged in protected activity. Fickes served as Association president in 2008 and 2009, then as vice-president in 2011 and finally on the negotiating team for a new collective bargaining agreement. Also, in 2009, while she was president, the Association filed a grievance on behalf of Fickes, another counselor and a school nurse, complaining that the Center violated the CBA when it required the employees in those positions to provide services to students of Chambersburg Area School District which were outside the recognition clause. These are all protected activities, under PERA. **Montrose Area Education Association v. Montrose Area School District**, 38 PPER 127 (Final Order, 2007).

Second, the Association proved that the Center officials knew about Fickes' protected activities. As set forth in the findings of fact, Fickes' activities on behalf of the Association were open and visible. Any sentient Center administrator would have to have known of her activities.

The disputed issue in this case is the third part of the test for discrimination, 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 employes 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 three factors.

The first factor is the entire background of the case, which focuses particularly on the history of conflict between the Chambersburg Area School District's superintendent and the Association. Chambersburg Area School District is the largest of the five sending districts. It has three of the nine seats on the JOC. It contributes 40-45% of Center's revenue. It was the District which joined the Center in opposing the 2009 grievance which resulted in Chambersburg having to do its own guidance counseling work and not rely on the Center's guidance counselor. It was the District's superintendent, Dr. Joseph Padasak, who was the Center committee member who began the move to eliminate Fickes' guidance counseling position. On June 9, 2011, he proposed the curtailing of the guidance program to one position. At that point, the District was also a defendant in the litigation involving another Association member, Joyce Cook. The Association argues that this history drove Dr. Padasak to retaliate against Fickes.

The Association further argues that Dr. Padasak's proposal for curtailing the guidance program was not justified by any specific budget reasons. No evidence was introduced to show the Center's fiscal condition. By the time Dr. Padasak suggested the idea, the budget for 2011-2012 academic year had been established. Instead, as offered by Dr. Charles Gregory Hoover, who was the Centers' Superintendent of Record at the time, the stated fiscal reason was to reduce costs now so that more money could be spent later.

The second factor advanced by the Association to infer anti-union animus is that the Center's furlough of Fickes eliminated a visible union leader. Fickes was president of the Association when it engaged in the successful pursuit of a grievance. The Association, with Fickes as its president, did engage in lengthy, contentious and successful litigation to protect contractual and statutory benefits for its members. This factor is closely related to the first factor, in that the grievance was also opposed by Chambersburg Area School District

The third factor advanced by the Association to infer animus, and the one most thoroughly argued by the Association, is that the Center failed to adequately explain why it furloughed Fickes rather than find a way to maintain her as some sort of professional Center employe or effectuate her transfer to one of the sending Districts. The

Association argues that this failure demonstrates that the Center's stated explanation was simply a pretext to eliminate a union activist.

The Center's decision to curtail the guidance program was based on factors set forth in a resolution of the JOC, dated July 21, 2011. The same day, the JOC requested the Pennsylvania Department of Education (PDE) to approve the curtailment. PDE approved the curtailment on August 16, 2011, and on that day, Fickes was suspended with an effective date of August 26.

The reasoning behind the Center's resolution was explained in the hearing by Dr. Gregory Hoover, the Center's Superintendent of Record from July, 2007 through June 30, 2012. The primary reason for the Superintendent's support for curtailment of the guidance program was the number of students served, citing the student to counselor ratio in the Greencastle-Antrim High School of 450-475:1 in comparison with the ratio at the Center of 200:1. Another motivating factor was the ability to utilize counselors in the home districts to provide routine social and emotional counseling and the ability of the shop instructors at the Center to provide career counseling with regard to their particular trades. Finally, the Superintendents were concerned about budgetary cuts in their own districts that necessitated cuts at the Center. Furthermore, Hoover testified that he would have recommended curtailment of the counseling program even if the Association had not filed the 2009 grievance.

The Association disputes the Center's explanations. The Association argues that the explanations are suspect. It sets forth two separate arguments for why the Center's witnesses should not be believed.

The first argument is that the Center, instead of furloughing Fickes, should have reassigned Fickes to the Dean of Students position, held by Judy Ann Kell, who had less seniority than Fickes.

The Center argues against this assertion, contending that the position of Dean of Students did not exist at the Center in 2011-12. The present administrative director, Yohn, and his predecessor, James Duffey, testified to this fact. Yohn testified that he was unaware of any position entitled Dean of Students. He testified that neither he nor the JOC ever approved a position or job description for Dean of Students.

On the other side of this dispute, Michael Tosten, the current Association president, testified that Yohn provided him with a job description of Dean of Students. However, Yohn stated he did not provide a job description to Tosten. Yohn testified in a straightforward and credible manner. He also testified that he did not know where the alleged job description for Dean of Students (Association Exhibit 14) came from. Tosten was not able to establish its provenance beyond his assertion that Yohn gave it to him. For example, Tosten was not able to identify the job description as part of an official book or collection of Center job descriptions, so as to authenticate the document. On this point, Yohn's testimony will be credited.

The Association also attempted to establish the existence of a Dean of Students position by introducing a page that it contends was from the personnel directory of the Center's website and therefore was evidence that the Center officials approved a position of Dean of Students. The page lists Judy Kell as "Educational Support/Dean of Students." However, Yohn testified that the website listing was erroneous and not the result of input or approval from Yohn, Superintendent of Record Hoover, the Center's Professional Advisory Committee or the JOC. Yohn pointed out that there were other mistakes made by the authors of the website, including the listing of former employes, non-Center employes and retirees (such as Roberta Johnson, Tim Semple, a former welding instructor and Becky Allison, a LIU No. 12 employe). Given this testimony, it is difficult to rely on the website page as proof that there was an authorized position of Dean of Students.

The Association also attempted to prove that Kell's position of Student Management Assistant was a misnomer and that Kell was actually the Dean of Students. The Association offered the deposition testimony of Roberta Johnston, who until her retirement in June,

2012 was the supervisor of Career and Technical Education, the second highest administrator in the Center. Johnston testified that she believed that Judy Kell's position was that of Dean of Students. Her recollection was that Kell and her predecessors were known as Dean of Students.

However, the Center's witnesses on this point testified that they had no knowledge of a Center employee holding the position of Dean of Students. Neither Yohn, nor his predecessor, James Duffey, knew of any person who held the position of Dean of Students during their respective tenures.

Duffey gave extensive testimony on how Judy Kell's position changed over the five years prior to the 2011-2012 school year. On the retirement of Edgar Bard, a guidance supervisor at the Center, the Center's management replaced Bard's position with two positions—a second guidance counselor (Fickes) and a Student Management Assistant (Brad Rideout). The guidance counselor would be in the professional unit. The Student Management Assistant would be in the support unit. A principal would do the administrative part of Bard's job. Kell later succeeded Rideout as Student Management Assistant. Duffey testified that he never drafted a position entitled Dean of Students and did not know where it came from. He testified that the JOC never approved a position or job description of Dean of Students during his tenure.

Duffey's testimony was given in a direct, clear and unequivocal fashion. His credible testimony regarding the alleged Dean of Students position was corroborated by Superintendent of Record Greg Hoover and Donald Hilbinger, current chairman of the Center's JOC.

After consideration of all of the evidence, the Association has not presented a convincing case that there was a Dean of Students position into which Fickes could have been reassigned as a professional employee with seniority over Kell. Accordingly, this argument will not support the alleged factor that the Center failed to adequately explain why it furloughed Fickes and failed to retain her in another professional position.

The Association's second argument toward the failure to explain the furlough is that the Center had a second way to avoid furloughing Fickes but it chose not to do so. The Association argues that the Center did not comply with the Transfer Between Entities Act, which requires when an employee is suspended, the employee "shall be offered employment in the program or class by the receiving entities when services are needed to sustain the program or class transferred."

The Association asserts that the Chambersburg Area School District hired a guidance counselor prior to the start of the 2011-2012 school term, that the position could have gone to Fickes, and Chambersburg Area School District Superintendent, Dr. Padasak, was aware that a guidance position was being eliminated at the Center, since he was the author of the idea. He was also aware that his district would be hiring a guidance counselor and that Fickes would have rights to that position.

First, it is not clear from this record if, and at what time, the Chambersburg Area School District hired a guidance counselor whose work could be done by Fickes, an event that would bring the Transfer Between Entities Act into play. Second, Yohn, the Administrative Director, on August 24, 2011, did notify, in writing, each of the participating districts of Fickes' furlough and her availability for a position. Furthermore, Marcia Bender, the PSEA uniserve representative provided her own notice to the participating districts. There is no evidence to support the argument that the Center failed to follow the Transfer Between Entities Act. Accordingly, this argument will not support the alleged factor that the Center failed to adequately explain why it furloughed Fickes and did not transfer her to a professional position in one of the sending school districts.

Accordingly, the third factor advanced by the Association to infer that anti-union animus motivated the Center in furloughing Fickes is not persuasive.

Having considered all the competent evidence introduced at two days of hearing and at the Johnston deposition, I am not persuaded that the three factors advanced by the Association lead to the inference that anti-union animus motivated the Center in its curtailment of the guidance program and its suspension and furlough of Fickes. Absent proof of the element of anti-union motivation, the Section 1201(a)(3) charge will be dismissed.

The Association also alleges Center's decision violated Section 1201(a)(1), which prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA." 43 P.S. 1101.1201(a)(1).

This Board has adopted the "tendency to coerce" test of **NLRB v. Brookwood Furniture Division of the United States Industries**, 701 F.2d. 452 (5th Cir. 1983) to determine whether an independent violation of Section 1201(a)(1) has occurred. An independent violation of Section 1201(a)(1) will be found if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive regardless of whether employes have been shown to, in fact, have been coerced. **Northwestern School District**, 16 PPER ¶ 16092 at 242 (Final Order, 1985).

In **Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI**, 35 PPER ¶ 97 (Final Order 2004), the Board reiterated the law with respect to section 1201(a)(1) as follows:

"An independent violation of Section 1201(a)(1) occurs where, based on the totality of the circumstances, the employer's actions would have the tendency to coerce or interfere with the protected activities of a reasonable employe, regardless of whether anyone was actually coerced. **Fink v. Clarion County**, 32 PPER ¶ 32165 (Final Order, 2001). The employer's motive for its actions is irrelevant. **Northwestern Education Association v. Northwestern School District**, 16 PPER ¶ 16092 (Final Order, 1985)."

35 PPER at 303.

If the employer's conduct was not coercive, then no violation of section 1201(a)(1) may be found. **Id.** Nor may a violation of section 1201(a)(1) be found if the employer presents a legitimate basis for its conduct that outweighs any coercive effect the conduct may have. **Temple University**, 23 PPER ¶ 23118 (Proposed Decision and Order 1992), **affirmed on another ground**, 25 PPER ¶ 25121 (Final Order 1994); **Philadelphia Community College**, 20 PPER ¶ 20194 (Proposed Decision and Order 1989). But if the employer presents no legitimate basis for its conduct that otherwise is coercive, then a violation of section 1201(a)(1) must be found. **Ringgold School District**, 26 PPER ¶ 26155 (Final Order 1995).

Based on all of the circumstances of this case and the evidence cited above, it must be concluded that the Center's actions were done for reasons that were not retaliatory or aimed at Fickes because of her protected activity. Despite Fickes' belief that she was targeted because of her protected activity, PDE's approval of the curtailment of the program provides a legitimate basis for the Center's action.

However, does waiting to furlough an employee until the day before the start of school make for a coercive effect that outweighs any legitimate basis the furlough may have had? **Temple University, supra.** As harsh as the Center's timing of its notification to Fickes could be viewed, I am constrained by the reality that the Center itself was forced to wait until that day in order to have the formal PDE approval for the curtailment. Accordingly, no finding of a Section 1201(a)(1) violation will be found on this theory either.

CONCLUSIONS

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

1. That Franklin County Career and Technology Center is a public employer within the meaning of Section 301(1) of PERA.
2. That the Franklin County Career and Technology Education 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 Center has not committed unfair practices in violation of Sections 1201(a)(1), (2), (3) 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 charge is dismissed and the complaint 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 sixth day of December, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner