COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WYOMING VALLEY WEST EDUCATION ASSOCIATION AND LINDA HOUCK	:	
	:	Case No. PERA-C-13-361-E
v.	:	
WYOMING VALLEY WEST SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On December 19, 2013, the Wyoming Valley West Education Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Wyoming Valley West School District (District or Employer), alleging that the District violated Section 1201(a)(1), (3), and (5) of the Public Employe Relations Act (PERA or Act).

On January 23, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating June 9, 2014, in Harrisburg as the time and place of hearing, if necessary.[1]

A hearing was necessary and was held before the undersigned Hearing Examiner as scheduled on June 9, 2014, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties also deposed additional witnesses on September 15, 2014 and submitted the transcripts into the evidentiary record. The record was subsequently closed on October 20, 2014. The Association submitted a post-hearing brief in support of its position on December 3, 2014. The District submitted a post-hearing brief in support of its position on February 12, 2015.

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 District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 9-10)

2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 10)

3. The Association represents all professional employes who work at the District, including teachers and librarians. (Exhibit A-5)

4. Linda Houck is a teacher at the District, who taught elementary instrumental music for approximately 17 years, until the 2013-2014 school year. Houck has also served as President of the Association for the past seven years. (N.T. 67-69)

5. As Association President, Houck fully participated in the grievance arbitration proceedings regarding librarian Joanne Prushinski and her assignment of Language Arts classes, which occurred in the fall of 2012. Houck testified at the arbitration hearing in support of the grievance. (N.T. 69-70)

6. Superintendent Charles Suppon, Director of Secondary Education David Tosh, and Principal Deborah Troy attended the arbitration proceedings and were aware of Houck's

[1] This matter was consolidated and heard at the same time as the case docketed at PERA-C-13-360-E because both cases involved the same parties.

participation therein. Further, Suppon was present for the entire proceeding and overheard Houck's testimony. (N.T. 29-31, 70)

7. On November 20, 2012, Houck testified at a second grievance arbitration proceeding between the Association and the District regarding a minimum grading policy issue. Suppon and Tosh were present for her testimony therein. (N.T. 70-72; Exhibit A-1)

8. During that proceeding, Houck offered testimony that contradicted the testimony of Tosh relative to an alleged meeting between her and Tosh, and whether the Association had consented to the new policy. (N.T. 72-76; Exhibit A-1)

9. On December 3, 2012, the District's School Board proposed cutting Houck's teaching position and approved notice to eliminate instrumental music positions. (N.T. 80-83; Exhibit A-9)

10. On December 6, 2012, Suppon visited Houck in her classroom and handed her a letter, which provided as follows:

> To Whom It May Concern:
>
> This communication serves as notice to the Wyoming Valley West Education Association and appropriate personnel in accordance with Article II, Number 28, Section F, of the collective bargaining agreement of said action taken by the Wyoming Valley West School Board on December 3, 2012.
>
> The (School) Board voted to study the delivery of instrumental lessons on the elementary level. Upon review of the program, a restructuring, consolidation, or elimination of the program as it currently exists may occur. This may or may not result in a reduction of staff or positions through furlough or attrition if the opportunity presents itself.

(N.T. 85; Exhibit A-10)

11. Other than Houck, who taught instrumental music at the elementary level, there were ten other music teachers working in the District: three at the high school (choral and instrumental music), three at the middle school (choral and instrumental music), and four at the elementary level (vocal, not instrumental). Houck ranked right in the middle with regard to seniority. (N.T. 112-113; Houck Dep. Tr. at 13-14)

12. Article II Section 28(C.5) of the CBA, provides in relevant part as follows:

> VACANCIES WHICH OCCUR BETWEEN AUGUST 1ST AND THE DAY PRIOR TO THE FIRST SCHEDULED SCHOOL DAY
>
> The District shall have the right to dispense with the posting notice.
>
> The District shall review Requests for Transfer Letters submitted by bargaining unit members...
>
> (5) If no member of the bargaining unit applies for a vacancy and the (School) Board does not choose to hire from outside the District and all other qualifications are equal, the (School) Board reserves the right to transfer the least senior certified member of the bargaining unit.

(Exhibit A-5)

13. When Suppon handed the letter to Houck on December 6, 2012, Houck noted an alleged discrepancy between the letter and Suppon's indication that the School Board would review the instrumental music program at the elementary level, and the actual wording of the motion, which approved notice to eliminate instrumental music positions. Houck told Suppon she knew what the word "eliminate" means, to which Suppon retorted "the

word you need to learn the meaning of is the word 'compromise.'" (N.T. 85-86, 140-141; Exhibits A-9 & A-10)

14. Houck understood Suppon's statement as a reference to her two recent arbitrations, including the one regarding the grading policy where she had challenged the truthfulness of Tosh. (N.T. 86-87)

15. Linda Houck's husband, Dale Houck, also taught music at the District as the Middle School orchestra teacher. He retired in June 2013 and gave notice of his retirement in early March. (N.T. 88-89)

16. Pursuant to the CBA, the District posted for the vacancy and invited Association members to bid on the position. However, no one bid on the position, including Houck who was not interested. (N.T. 89-91, 108, 147; Exhibit A-2)

17. Beginning in January and throughout the spring of 2013, the District advised Association President Houck that her elementary music position would not be touched. (N.T. 94-95, 101-103)

18. Under past practice, a teacher losing his or her position and being involuntarily transferred to another assignment must receive a notice of displacement by the end of the preceding school year. The reason is so the displaced teacher will know that his or her assignment will change, and if the teacher dislikes the change, can have the opportunity to bid on vacancies in other positions. Houck did not receive any such notice during the 2012-2013 school year. (N.T. 103-110; Exhibits A-13 & A-14)

19. In the spring of 2013, there were several postings that interested Houck. However, she did not bid on any of them because she had not received any displacement notice from the District. (N.T. 103-110)

20. Houck did not receive notice that her position was being eliminated and that she was being transferred to the Middle School until August 19, 2013, which was four days before the start of the 2013-2014 school year. She did not receive anything in writing from the District. Instead, she learned of the transfer through a phone call from the chair of the music department, who is a colleague and not an administrator. Specifically, she learned that she was being transferred to the Middle School orchestra position, which had been posted following her husband's retirement. (N.T. 103-106, 147)

21. Houck's involuntary transfer took place at the beginning of the 2013-2014 school year. On October 31, 2013, she applied for and received a transfer to the position of Title One Reading teacher. She would not have transferred to the Title One Reading position if she had not been involuntarily transferred at the start of the school year. (N.T. 66-69, 114)

DISCUSSION

The Association has alleged that the District violated Section 1201(a)(1), (3), and (5) of the Act[2] by eliminating Houck's position of elementary music teacher and involuntarily transferring her to a position, which she did not want at the Middle School, in retaliation for her protected activity. The District, on the other hand, maintains that it had a legitimate nondiscriminatory reason for eliminating Houck's position and transferring her to the Middle School. The District asserts that it was able to avoid hiring another teacher and comply with its mandate from the School Board to sustain the same programs and provide the same services to students without additional costs. The District further contends that Houck was the logical person to fill the vacancy.

[2] Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization...(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

With regard to the Association's Section 1201(a)(3) discrimination claim, the Complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employe engaged in activity protected by PERA; (2) that the employer knew the employe engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employe's involvement in protected activity. **Audie Davis v. Mercer County Regional Council of Government**, 45 PPER 108 (Proposed Decision and Order, 2014) citing **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981). Once a prima facie showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity. **Teamsters Local 776 v. Perry County**, 23 PPER ¶ 23201 (Final Order, 1992). If the employer offers such evidence, the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual. **Teamsters Local 429 v. Lebanon County**, 32 PPER ¶ 32006 (Final Order, 2000). The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the protected conduct. **Mercer County Regional COG**, *supra*, citing **Pennsylvania Federation of Teachers v. Temple University**, 23 PPER ¶ 23033 (Final Order, 1992).

In addition, the Board has recognized that, in the absence of direct evidence, it will give weight to several factors upon which an inference of unlawful motive may be drawn. **City of Philadelphia**, 26 PPER ¶ 26117 (Proposed Decision and Order, 1995). The factors which the Board considers are: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities-for example, whether leading organizers have been eliminated; the extent to which the adversely affected employes engaged in union activities; and whether the action complained of was "inherently destructive" of employe rights. **City of Philadelphia**, *supra*, *citing* **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). Although close timing alone is insufficient to support a basis for discrimination, **Teamsters Local 764 v. Montour County**, 35 PPER 12 (Final Order, 2004), the Board has long held that the timing of an adverse action against an employe engaged in protected activity is a legitimate factor to be considered in determining anti-union animus. **Berks Heim County Home**, 13 PPER ¶ 13277 (Final Order, 1982).

In this case, the Association has clearly sustained its burden of proving all three elements of the Section 1201(a)(3) test for discrimination. First of all, Houck is the Association President and participated in two grievance arbitration proceedings in the fall of 2012. She testified at both proceedings and was observed by the District's Superintendent Suppon, as well as other prominent District officials. As a result, she clearly engaged in protected activity, of which the District had definitive knowledge. Indeed, the District does not seem to dispute these elements. (*See* District's Brief at p. 21). The Association has also demonstrated that the District was unlawfully motivated when it eliminated Houck's elementary position and involuntarily transferred her to the Middle School.

The first factor which supports an inference of anti-union animus is the statement of the District's Superintendent Suppon on December 6, 2012. On that date, Suppon visited Houck in her classroom and handed her a letter indicating that the School Board had voted to study the delivery of instrumental lessons on the elementary level. When Suppon handed the letter to Houck on December 6, 2012, Houck noted an alleged discrepancy between the letter and Suppon's indication that the School Board would review the instrumental music program at the elementary level, and the actual wording of the School Board's December 3, 2012 motion, which approved notice to eliminate instrumental music positions. Houck told Suppon she knew what the word "eliminate" means, to which Suppon retorted "the word you need to learn the meaning of is the word 'compromise.'" Houck understood Suppon's statement as a reference to her two recent arbitrations, including the one regarding the grading policy where she had challenged the truthfulness of Tosh.[3]

[3] The District presented evidence which contradicted the Association's evidence on this point. However, I find that the District's evidence in this regard lacks credibility.

What is more, the timing of the Superintendent's statement and the initiation of the adverse employment action also support an inference of anti-union animus here. As the Association points out, Houck provided testimony during Prushinski's arbitration during August 2012 and October 2012, then she testified at the November 20, 2012 arbitration proceedings regarding the minimum grading policy, during which she offered testimony that contradicted the testimony of Tosh. Less than two weeks later, on December 3, 2012, the District's School Board approved notice to eliminate instrumental music positions. And then three days later, Suppon confronted Houck in her classroom, handed her a letter suggesting that she could be furloughed, and made reference to the positions she had taken during the recent arbitration proceedings. Although the District did not ultimately transfer Houck until August 2013, the close timing between Houck's testimony during the minimum grading policy arbitration and the District's approval to cut her position, coupled with the Superintendent's remarks, clearly establish unlawful motivation on behalf of the District.[4]

Further, the District has not offered a credible explanation for why it had to eliminate Houck's elementary position and transfer her to the Middle School. The record shows that there were ten other music teachers working in the District: three at the high school, three at the middle school, and four at the elementary level. Houck ranked right in the middle with regard to seniority. Houck's husband, Dale, taught music at the District as the Middle School orchestra teacher, but he retired in June 2013. The District posted for the vacancy, but no one bid on the position. The District contends that it eliminated Houck's elementary position and transferred her to the Middle School because doing so allowed the District to sustain the same program and provide the same services to students without the cost of hiring an additional teacher. The District asserts in its brief that Houck was the logical person to fill the vacancy at the Middle School. However, the record does not support this argument.

The District did not explain in any way whatsoever how or why Houck was the logical person to fill the vacancy at the Middle School. Indeed, there were ten other music teachers in the District, three of which were already at the Middle School. Why the District could not use any one of the other ten music teachers, including the three who were already at the Middle School is a mystery. Nor did the District explain why it had to eliminate Houck's elementary position instead of one of the other three elementary or three high school positions. Without more of a detailed explanation as to why the District chose to specifically eliminate Houck's elementary position and transfer her to the Middle School, I am unable to conclude that the District had a legitimate nondiscriminatory reason for the adverse employment action. As such, I reject as not credible and not persuasive the District's proffered reasons for eliminating Houck's elementary position and involuntarily transferring her to the Middle School. On this record, I must conclude that the District would not have taken the adverse employment action against Houck had it not been for her engaging in protected activity. Accordingly, the District has violated Section 1201(a)(1) and (3) of the Act.

Finally, the Association has alleged an independent violation of Section 1201(a)(1) of the Act. The Board has held that 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 in fact to have been coerced. **Bellefonte Area School District**, *supra*, citing **Northwestern School District**, 16 PPER ¶ 16092 (Final Order, 1985). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 1201(a)(1). **Northwestern School District**, *supra.*

[4] The District argues that these December 2012 events are outside the limitations period set forth in the Act, and therefore, should not be considered. However, it is well settled that evidence of occurrences outside the statute of limitations period may be used to support a finding of discriminatory motive for events that occurred within the statute of limitations, which may be, in and of themselves, an unfair practice. Thus, earlier events may be used to shed light on the true character of matters that have occurred within the limitations period. **Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police**, 42 PPER 46 (Final Order, 2011). In this case, Houck's involuntary transfer was not implemented until August 23, 2013, which was within four months of the December 16, 2013 charge. As a result, the District's argument on this point is rejected.

The record here contains an adequate showing that the District's actions in retaliating against the Union President less than two weeks after her testimony at a controversial grievance arbitration by approving notice to eliminate her position, suggesting that she needs to learn to compromise, and eventually following through with eliminating her position and transferring her to another position, which she did not want, would have a tendency to coerce employes in the exercise of their rights. Therefore, the District has also committed an independent violation of Section 1201(a)(1) of the Act.[5]

CONCLUSIONS

The 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 within the meaning of Section 301(1) of PERA.

2. The Association is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The District has committed unfair practices in violation of Section 1201(a)(1) and (3) of PERA.

5. The District has not committed unfair practices in violation of Section 1201(a)(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 employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(a) Rescind the elimination of Linda Houck's elementary school position, return her to such position, and make her whole for any lost wages, benefits, and other emoluments of employment, including six (6%) percent per annum interest, effective immediately;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place, readily accessible to its employes, and have the same remain so posted for a period of ten (10) consecutive days;

(c) 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

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

[5] The Association has not established a violation of Section 1201(a)(5). As a result, that portion of the charge will be dismissed.

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 third day of June, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

WYOMING VALLEY WEST EDUCATION ASSOCIATION AND LINDA HOUCK	:	
	:	Case No. PERA-C-13-361-E
v.	:	
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AFFIDAVIT OF COMPLIANCE

Wyoming Valley West School District hereby certifies that it has ceased and desisted from the violations of Section 1201(a)(1) and (3) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union 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