

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CRESTWOOD EDUCATION ASSOCIATION, :
PSEA/NEA :
 : Case No. PERA-C-16-272-E
v. :
 :
CRESTWOOD SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On September 14, 2016, the Crestwood Education Association, PSEA/NEA (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Crestwood School District (District or Employer), alleging that the District violated Section 1201(a)(1), (3), and (5) of the Public Employee Relations Act (PERA or Act) by threatening to eliminate educational programs and bargaining unit positions in retaliation for the Association's protected activity.

On October 4, 2016, 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 January 6, 2017, in Harrisburg, as the time and place of hearing, if necessary. The hearing was subsequently continued to March 22, 2017 at the request of the District and without objection from the Association.

The hearing was necessary and was held before the undersigned Hearing Examiner of the Board on March 22, 2017, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties both filed post-hearing briefs in support of their respective positions on May 15, 2017.

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. 6)
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. The Association is the exclusive bargaining representative for a unit of professional employes at the District. (Joint Exhibit 1)
4. The Association and the District are parties to a collective bargaining agreement (CBA), which is effective from 2015 through 2020. The CBA contains a grievance procedure in Article IV, Section 4.05 as follows:

Prior to any written presentation of a grievance, aggrieved employee and/or [Association] representative and building administrator must meet in an informal conference to discuss the alleged violation, interpretation, or misapplication of any Agreement article (NOTE: this meeting should be held within a

reasonable amount of time). Should the informal conference prove unsuccessful in resolving the issue or issues in dispute, the grievance procedure timeline outlined in Sections 4.1 through 4.9 commences.

(Joint Exhibit 1) (Emphasis in original)

5. Carolyn Boone is an elementary teacher at the District, who has been President of the Association for seven years. (N.T. 12, 14)

6. Joseph Gorham has been the Superintendent at the District since April 2016. (N.T. 14-15, 49)

7. In July 2016, a dispute arose between the Association and the District regarding the location of Assistant Superintendent Joseph Rasmus's office. (N.T. 18-23; Exhibit A-1)

8. By email dated July 14, 2016, PSEA UniServ Representative Virginia Cowley indicated the following to Gorham:

I would like to talk to you, or better yet meet with you on the placement of the Asst. (sic) Superintendent's office. While I understand your thoughts that being in the library would have him be more accessible, the Association fears that it may actually have the opposite effect.

Classes are taught there, having an administrator stationed in a classroom is tantamount to constant observation. We cannot allow that to happen without a grievance. The high school has a strong and vocal team of professionals. They have expressed their concerns and have asked that the Association follow through. Frankly, the officers and I all agree with them. This situation will undermine our faculty and discourage them from utilizing this administrator and cause out (sic) professional (sic) to feel as if their every move is being monitored.

I know you understand our position as you are seeking another confidential secretary so that the administrative suite will be filled with personnel that are all on the same team.

I will be in Gettysburg next week, but please work through my associate Aprile to set up a meeting for the following week.

(Exhibit A-1)

9. On July 26, 2016, the Association met with Gorham and Rasmus to discuss the issue, consistent with the first step of the grievance process set forth in Article IV, Section 4.05 of the CBA. Boone and Cowley were present for the Association, along with William Kane, who is the Association's Vice President. (N.T. 17-18, 25)

10. During the meeting, the parties discussed several issues, including the Instructional Coaches, who work in the high school library and are members of the bargaining unit. Gorham initially indicated that some of the School Board members do not understand what the Instructional Coaching positions are and what they do in the District, but stated that the positions

could be of great benefit if their worth could be proven to the School Board. (N.T. 22, 25-27)¹

11. Later in the meeting, the Association advised Gorham that it would file a grievance to challenge the relocation of the Assistant Superintendent's office. At that point, Gorham became loud and angry, and stated "if the School Board doesn't understand these positions and you're going to file this petty grievance, I will not support those positions." (N.T. 25-28)

12. As part of the annual budgetary process, the Superintendent makes recommendations to the School Board regarding the future of various programs, positions, and curriculum. (N.T. 15-17, 30-31)

13. On July 28, 2016, the Association filed a formal written grievance alleging a violation of the CBA with regard to the relocation of the Assistant Superintendent's office. (N.T. 36; Exhibit A-3)

DISCUSSION

The Association has alleged that the District violated Section 1201(a)(1), (3), and (5) of the Act² by threatening to eliminate educational programs and bargaining unit positions in retaliation for the Association's protected activity of indicating its intent to file a grievance. The District, on the other hand, contends that the charge should be dismissed because there was no violation 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 employees have been shown in fact to have been coerced. Bellefonte Area School District, 36 PPER 135 (Proposed Decision and Order, 2005) 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.

The Association has sustained its burden of proving that the District violated Section 1201(a)(1) of the Act. Indeed, the record shows that the Association indicated its intent to file a grievance over the relocation of the Assistant Superintendent's office during a meeting between the Association's leadership and the District's Superintendent and Assistant Superintendent on July 26, 2016, which was the first step in the grievance process outlined in the CBA. In response to the Association, the Superintendent, who initially praised the instructional coaching positions

¹ The record shows that there are three such instructional coaching positions in the bargaining unit. (N.T. 29).

² Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employees 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 employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative." 43 P.S. § 1101.1201.

during the very same meeting only moments before, became loud and angry, and stated "if the School Board doesn't understand these positions and you're going to file this petty grievance, I will not support those positions." The Superintendent is responsible for making recommendations to the School Board regarding the future of various programs, positions, and curriculum as part of the yearly budgetary process. Thus, the Superintendent's statement reflects an unequivocal warning that the bargaining unit members proceed at their own peril and risk losing the support of the Superintendent for their instructional coaching positions with regard to the School Board's annual budget process, the implication being that the positions could be eliminated, if they actually proceed to file a grievance. This would clearly have a tendency to coerce employes in the exercise of their statutory right to present grievances to their employer. See Dormont Police Ass'n v. Dormont Borough, 32 PPER ¶ 32119 (Proposed Decision and Order, 2001). Accordingly, the District has committed unfair practices in violation of Section 1201(a)(1) of PERA.

The Association also argues that the District violated Section 1201(a)(3) of PERA in making the threat to eliminate the bargaining unit instructional coaching positions in retaliation for the grievance. However, a necessary element of a discrimination claim is that a public employer adversely or negatively affected an employe's terms or conditions of employment or employment status. See Reading Education Ass'n v. Reading School District, 43 PPER 117 (Proposed Decision and Order, 2012). Where there is no record of an adverse employment action beyond a coercive threat, the threat alone is not a separate violation of the statutory prohibition against discrimination. See E.B. Jermyn Lodge No. 2 of the Fraternal Order of Police v. City of Scranton, 38 PPER 104 (Final Order, 2007). In this case, while the Association established a violation of Section 1201(a)(1) of the Act, the Superintendent's coercive threat does not amount to a separate violation of Section 1201(a)(3) in light of the fact that there was no adverse employment action contained in the record. As such, the charge under Section 1201(a)(3) must be dismissed.³

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) of PERA.
5. The District has not committed unfair practices in violation of Section 1201(a)(3) or (5) of PERA.

³ Likewise, the record does not support a statutory bargaining violation under Section 1201(a)(5) of PERA. As a result, the charge under that Section will also be dismissed.

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

(a) 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;

(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 Union.

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 12th day of July, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The Crestwood School District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) of the Public Employee 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 in the manner prescribed therein; and that it has served a 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