COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SUSQUENITA EDUCATION ASSOCIATION, PSEA/NEA	:	
v.	:	Case No. PERA-C-08-72-E
SUSQUENITA SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On February 28, 2008, Susquenita Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Susquenita School District (District) alleging that the District violated Sections 1201(a)(1) and (3) of the Public Employe Relations Act (PERA).

On March 20, 2008, 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 June 12, 2008, in Harrisburg was scheduled as the time and place of hearing if necessary.

The hearing was necessary and was held as scheduled. A second day of hearing was held on September 24, 2008.

At the hearings, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence

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. That the Susquenita School District is a public employer within the meaning of Section 301(1) of PERA.

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

3. That the District and the Association are parties to a collective bargaining agreement (CBA) for the 2004-2005 school year through the 2008-2009 school year. (N.T. 29, 30, Association Exhibit 6)

4. That in the 2007, the District succeeded in applying for a grant to participate in Classrooms for the Future (CFF), a Pennsylvania Department of Education pilot program that provided high school core subject teachers and classrooms with technology that consisted of laptop computers for students as well as projection, digital video projectors and digital white boards. The core classes for the CFF included math, science, communication arts, social studies and special education. (N.T. 107-109)

5. That CFF is a yearly grant, with $268,000 going to the District for 2007-08 school year. The District applied for and was awarded a grant of $48,000 for the 2008-09 school year. (N.T. 111)

6. That one condition of the CFF grant required each core teacher to complete a training program. The District offered two options for CFF training; one option required participation in an estimated 30 hours of professional development under Act 48, which requires teachers to engage in District-directed professional development activities; the other was to complete a master's program at Wilkes University. (N.T. 116, 144)

7. That Linda Hagenbuch was a member of the Susquenita faculty for 19 years, all at the high school. When the District announced the CFF grant, Mrs. Hagenbuc was planning to retire at the end of the 2007-08 school year. She retired on June 11, 2008. She taught Earth/Space Science and Algebra. (N.T. 11, 41)

8. That on November 7, 2007, Mark Maldet, District Director of Curriculum and Instruction, and Dr. Michael Jones, high school principal, conducted an after-school meeting with high school core teachers to review the CFF program. Ms. Hagenbuch attended the event. (N.T. 42)

9. That Mr. Maldet and Dr. Jones advised teachers they were authorized to exchange up to two "trade days" in the 2008-2009 school year for meeting the professional development option of CFF. Dr. Jones described these "trade days" as an incentive to participate in the program. (N.T. 120)

10. That "trade days" were days that teachers could take a day off instead of attending in-service training. The "trade days" concept had been established two years earlier after an agreement was reached with the Association. (N.T. 189)

11. That Ms. Hagenbuch approached Dr. Jones, her principal, after the November 7, 2007 meeting. She said that since she was retiring in June, 2008, she would be unable to take advantage of the incentive of the two trade days in the next school year. Because of not being able to use the "trade days" she said that she would not be able to do the training unless she was reimbursed. (N.T. 16-18)

12. Mrs. Hagenbuch thought it was unfair that she would not be compensated for having to use contractually provided planning or preparation periods to do the CFF training and never receive "trade days" as the other teachers would be receiving. (N.T. 12-16, 96-1000

13. That Dr. Jones advised her to meet with him later to discuss this. (N.T. 16-17)

14. That Mrs. Hagenbuch met with Dr. Jones on November 20, 2007. Mr. Maldet also attended the meeting. Mrs. Hagenbuch explained that she wanted the same benefit of trade days that would be given to teachers next year but that she would not receive because of her retirement. Mr. Maldet made it clear that there would be no reimbursement because the grant did not provide for that expense.
Dr. Jones told her that if she did reconsider her objection to participating in CFF, there was a strong possibility of being reassigned. (N.T. 125, 139-141)

15. That Mr. Jones followed the meeting with a letter to Mrs. Hagenbuch summarizing what occurred in the meeting. The letter concluded by stating,

> I explained that it is important for you to understand, given the nature of the grant, the opportunities for our students, and given your position in not participating in the necessary training, there is a strong possibility that you would need to be reassigned. You stated you understood.

(N.T. 18, 30, Association Exhibit 2)

16. That on November 27, 2007, in response to the November 20 letter, Mrs. Hagenbuch, wrote to Dr. Jones repeating her request for compensation and expressing surprise about Dr. Jones' statement in the letter that in the November 20 meeting he told her that she could be reassigned for failing to agree to the CFF training. Mrs. Hagenbuch asked for another meeting. (N.T. 20, 30, Association Exhibit 3)

17. That on November 28, another meeting was held with the same participants. Also, Claudio Valeri, the Association building representative, attended. Mrs. Hagenbuch went over her same concerns. The meeting ended with Mrs. Hagenbuch agreeing to sign the CFF participation form only after she took it home with her to add her written objections. (N.T. 128, Association Exhibit 5)

18. On November 29, 2007, Mrs. Hagenbuch returned the CFF participation form to the District. Rather than simply signing the form, she added language saying that she "will work toward completing" the training, crossing out the word "must complete" and adding language that she was signing the letter under protest over the District's refusal to provide her compensation. (N.T. 12, 30, Association Exhibit 1)

19. In response, Dr. Jones wrote to Mrs. Hagenbuch that since she was not willing to complete the thirty (30) hours of CFF training that he was recommending to the Superintendent and the Board that she be reassigned effective January 2, 2008. (N.T. 24, 30, Association Exhibit 5)

20. That approximately 17 teachers took the CFF training at the building level. The other teachers satisfied the CFF training requirement by taking the class at Wilkes. (N.T. 143-144)

21. That the building level training required 30 hours to complete. Dr. Jones took the training from December 2007 to May 2008. He did all of his training on-line at home, after school hours. (N.T. 147)

22. That Mrs. Hagenbuch was reassigned to a substitute position on January 2, 2008. She remained at the maximum step on the salary scale and continued to be entitled to all fringe benefits under the collective bargaining agreement. (N.T. 86-87)

DISCUSSION

The Association's charge of unfair practices alleges that the District wrongfully reassigned Linda Hagenbuch from her classroom position to a substitute position in the last semester of her teaching career as an act of retaliation for her request for reimbursement to take professional development training. The Association charges that this wrongful reassignment constituted a violation of Sections 1201(a)(1) and 1201(a)(3) of PERA.

As set forth in the Findings of Fact, in 2007, the District mandated that all teachers in core subjects participate in CFF training in order to satisfy a condition of a Department of Education Grant to teach teachers on the use of advanced technology in the classroom. The training would be in addition to time spent in the classroom and time set forth in the CBA. As an incentive to participate, the District notified teachers that they could "trade" the days they would have spent at in-service training for vacation days in the next school year. Mrs. Hagenbuch, an association member, was a teacher who was required to take the training in 2007-08. However, she was retiring in June, 2008, so she would not be able to take advantage of the District incentive of "trade days" in 2008-09. To rectify what she saw as unfair treatment, she asked her principal for either an adjustment for her last year of teaching or compensation. The principal informed her that such assistance was not possible for her and told her that if she did not participate she could be reassigned. The principal followed the meeting with a letter.

Mrs. Hagenbuch then asked for a meeting with her Association representative and the District. The principal repeated his position as well as the statement that she would be reassigned if she did not participate in the training. Mrs. Hagenbuch took the participation form home, edited it to remove the condition that she agreed that she "must complete" the thirty (30) hours of training. The principal then followed through on his promise to reassign her. On January 2, 2008, the District's Board of Directors voted to make Mrs. Hagenbuch a substitute for the 2008 spring semester, with no loss of pay, seniority or fringe benefits. The present charge was filed.

The first allegation to be addressed is the Association's charge that the District's decision to reassign her to substitute work violated Section 1201(a)(3). To prove that the District violated this section, the Association must prove, by substantial and legally credible evidence, the following elements: (1) that the individual was engaged in protected activity under the Act; (2) that the employer was aware of the employe’s protected activity; and (3) that the employer’s decision to take action against

the employe was motivated by the employe's exercise of protected activity. St. Joseph's Hospital v PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

Suspicion is an insufficient basis upon which to find an employer has been motivated by anti-union animus. Shive v. Bellefonte Area School District, 317 A.2d 311 (Pa. Cmwlth. 1974).

This charge will not be sustained because the Association has not proven that the District's action in reassigning Mrs. Hagenbuch was motivated by the Association assisting Mrs. Hagenbuch in her request for compensation. The District's witness testified clearly and credibly that they informed Mrs. Hagenbuch at the November 20 meeting that she could be reassigned if she did not participate in the training. Mrs. Hagenbuch had a different recollection of the November 20 meeting and thought that she would merely lose her particular math classroom, not be entirely reassigned to a substitute teaching position. When the District followed through in January, 2008, with the reassignment to a substitute position, that reassignment decision was consistent with its position in the November 20 meeting. The District's opposition to Mrs. Hagenbuch's complaint was the same from the beginning of objections, even before she sought assistance from the Association. Without proof that the District's position and eventual action was motivated by Mrs. Hagenbuch's exercise of protected activity, the third element necessary for a Section 1201(a)(3) charge is missing and the charge must be dismissed.

Next to be addressed is the allegation that the District violated Section 1201(a)(1) of PERA. Section 1201(a)(1) of PERA prohibits public employers from "[i]nterfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of [the PERA, Section 401, 43 P.S. §1101.401 (providing the right of public employees to organize and to join employee organizations and to engage in concerted activities for the purpose of collective bargaining or other mutual aid)].

"While an employer's motive makes the offense in a Section 1201(a)(3) violation, anti-union animus is not a necessary prerequisite to proving an independent violation of Section 1201(a)(1). "Purity of heart is no defense to a charge under Section 1201(a)(1) of the Act." Montgomery County Community College, 16 PPER 16156 (Court of Common Pleas of Montgomery County, 1985). In fact, even an inadvertent act may violate Section 1201(a)(1). Woodland Hills School District, 13 PPER 13298 (Final order, 1982). 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). An employer's legitimate business purpose can be a defense to a Section 1201(a)(1) charge. Philadelphia Community College, 20 PPER ¶ 20194 (Proposed Decision and Order, 1989).

As explained above, the District reassigned Mrs. Hagenbuch to a substitute position because she would not agree to follow a District directive that she participate in training unless she was reimbursed in some way. The reassignment had nothing to do with her seeking assistance from the Association. Before Mrs. Hagenbuch brought the Association building representative to the November 28 meeting, the building principal verbally told her on November 20 that she should expect to be reassigned if she did not participate in the CFF training. The principal followed that statement with a letter that was consistent with what Dr. Jones and Mr. Maldet verbally told her in the November 20 meeting. The Association disputes that fact. Mrs. Hagenbuch testified that she heard the building principal and Mr. Maldet say that if she did not participate in training she would lose her classroom, which she interpreted to mean that she would be sent to another classroom but still allowed to teach the same subjects. However, Dr. Jones and Mr. Maldet testified credibly that they made no such statements but told her she would be reassigned if she did not participate. The District administrators took this action because they believed they had no other choice under the terms of the grant. This decision by management cannot be construed as coercive or retaliatory in violation of Section

1201(a)(1) if it was consistent with what the principal told Mrs. Hagenbuch on November 20 were the grant restrictions, before Mrs. Hagenbuch even sought Association assistance.

Ms. Hagenbuch's situation evokes sympathy. In seeking the benefit of trade days that were being given to other teachers the year after she retired, her complaint to the District administrators that she wanted a comparable benefit was understandable. The "trade days" was an obvious attempt by the District to compensate teachers for working beyond the contractual work day. However, the District's particular conduct toward Mrs. Hagenbuch has not violated PERA.

CONCLUSIONS

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

1. That the District is a public employer within the meaning of Section 301(1) of PERA.

2. That the 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 District 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 of unfair practices 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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twelfth day of May, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner