

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE :
COLLEGE AND UNIVERSITY FACULITES :
 : CASE NO. PERA-C-11-107-E
v. :
 :
PENNSYLVANIA STATE SYSTEM OF HIGHER :
EDUCATION, WEST CHESTER UNIVERSITY¹ :

PROPOSED DECISION AND ORDER

On April 15, 2011, the Association of Pennsylvania State College and University Faculties (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Pennsylvania State System of Higher Education (PASSHE) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA). The Union specifically alleged that PASSHE coerced Coach Rudisill regarding his protected activities and retaliated against him by sending a letter allegedly threatening to recoup \$115,000 of his summer camp compensation several days before the scheduled grievance arbitration hearing regarding the reduction in his summer camp pay.

On July 28, 2011, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of January 9, 2012, in Harrisburg. After several granted continuance requests, the matter was rescheduled for and held on June 6, 2012, in Harrisburg. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The Union filed its post-hearing brief on August 23, 2012, and PASSHE filed its post-hearing brief on October 9, 2012.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. PASSHE is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5)
3. James Rudisill has been the head men's and women's swimming and diving coach at West Chester University (WCU) since 1988. He is a member of the Union's intercollegiate coaches' bargaining unit. (N.T. 52-54)
4. Article 7 Section 3(E) of the parties' collective Bargaining Agreement (CBA) provides as follows:

Current practices regarding compensation for camps and clinics, including dual compensation, run by Regular Full-time COACHES employed as of the effective date of this Agreement shall continue.

(Joint Exhibit 1, at 12)

5. On May 4, 2010, Arbitrator Walt DeTreuX concluded that Article 7 Section 3(E) of the CBA prohibited PASSHE from changing the compensation practices for coaches' summer camp compensation. (Union Exhibit 1)

6. WCU paid Coach Rudisill 20% of the adjusted gross swim camp proceeds in 2005, 2006 and 2007. (Union Exhibit 10)

¹ The caption appears as amended by the Hearing Examiner.

7. Dr. Matthew Bricketto is the Vice President for Student Affairs at WCU and is Coach Rudisill's supervisor. (Union Exhibit 10)

8. Dr. Bricketto approved Coach Rudisill's receipt of 20% of the adjusted gross camp proceeds for three years consecutively for 2005 through 2007. Coach Rudisill's compensation was reviewed and approved at three different levels for three years. (Union Exhibit 10)

9. In 2008, Dr. Bricketto reduced Coach Rudisill's compensation by approximately 50%. The reduction altered the practice of paying Rudisill 20% of the adjusted gross and violated the CBA, which preserved that compensation practice. Dr. Bricketto continued to maintain the reduction in Coach Rudisill's camp compensation in 2009 and 2010. (Joint Exhibit 1; Union Exhibits 3, 4 & 10)

10. On July 9, 2008, Coach Rudisill grieved the reduction of his camp compensation. The grievance sought to have his full camp compensation reinstated, which Dr. Bricketto denied on July 24, 2008. (Union Exhibits 2-4).

11. Michael Mottola is the Assistant Vice Chancellor for labor relations at PASSHE. (N.T. 61)

12. On September 16, 2008, the grievance was filed with Michael Mottola's office, at step two of the grievance procedure. Mr. Mottola did not learn of the grievance until October, 2010, when it became necessary to prepare for the arbitration hearing scheduled for November 9, 2010. The arbitration hearing was postponed until December 22, 2010. (N.T. 30, 61-63)

13. Julie Reese is a Union representative who investigates, processes and negotiates grievances on behalf of bargaining unit members. (N.T. 17)

14. Mr. Mottola informed Ms. Reese, in early November 2010, that he believed that Coach Rudisill had been overpaid for camps in 2005, 2006, 2007, 2009 and 2010, and that Coach Rudisill had to repay the overpaid amount. (N.T. 24; Union Exhibit 6)

15. Prior to this time, Mr. Mottola had no knowledge of camp payment practices at WCU. (N.T. 62)

16. The coaches in the bargaining unit receive individual contracts that are subject to annual renewal. Management's decision whether to renew a coach's contract is not subject to review or arbitration and is not tied to a performance evaluation. (Joint Exhibit 1)

17. In communications with Ms. Reese, Mr. Mottola sought to meet with Ms. Reese, Coach Rudisill and Dr. Bricketto from November 4, 2010, until December 17, 2010. Ms. Reese refused to agree to a meeting between management and the grievant. (N.T. 28-29)

18. On December 8, 2010, Ms. Reese met with Mr. Mottola, at which time Mr. Mottola presented her with a draft overpayment recoupment letter for Coach Rudisill, which Ms. Reese conveyed to Coach Rudisill. The letter alleged that Coach Rudisill was overpaid in the amount of \$115,445, over several years. (N.T. 28-30; Union Exhibit 8)

19. On December 17, 2010, Mr. Mottola phoned Ms. Reese to discuss the alleged overpayment issue and sought her plan of action. Ms. Reese informed him that the Union was proceeding to arbitration on December 22, 2010. (N.T. 30-31)

20. On December 20, 2010, two days before the scheduled arbitration hearing to resolve Coach Rudisill's summer camp compensation issues, Mr. Mottola's assistant e-mailed the letter informing Coach Rudisill of PASSHE's intent to recapture an alleged overpayment of \$115,445. (N.T. 31-32; Union Exhibit 9)

DISCUSSION

The Union contends that PASSHE independently violated Section 1201(a)(1) of PERA when Mr. Mottola, contrary to existing payment practices at WCU and the CBA, notified Rudisill that he owed PASSHE \$115,445, as his grievance arbitration hearing was approaching. PASSHE, however, maintains that there is no independent 1201(a)(1) because PASSHE was obligated under a management directive to notify Coach Rudisill of the possible overpayment for summer camp compensation for 2005, 2006 and 2007, when it came to Mr. Mottola's attention, which was unrelated to Coach Rudisill's exercise of any protected rights or activities.

An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions has a tendency to coerce a reasonable employe in the exercise of protected rights." **Fink v. Clarion County**, 32 PPER ¶ 32165 at 404 (Final Order, 2001); **Northwest Area Educ. Ass'n v. Northwest Area Sch. Dist.**, 38 PPER 147 (Final Order, 2007). Under this standard, the complainant does not have a burden to show improper motive or that any employes have in fact been coerced. **Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI**, 35 PPER 97 (Final Order, 2004). However, an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. **Ringgold Educ. Ass'n v. Ringgold Sch. Dist.**, 26 PPER 26155 (Final Order, 1995).

The totality of the circumstances in this case yields the conclusion that PASSHE independently violated Section 1201(a)(1) of PERA. Coaches in the bargaining unit are employed under one-year contracts that may or may not be renewed. Renewal is under the sole and unilateral discretion of management. Moreover, the non-renewal of a coach's annual employment contract is not reviewable or arbitrable under the parties' CBA. With the prospect of non-renewal in the forefront of his mind, a reasonable person in Coach Rudisill's position would have a tendency to be coerced under these circumstances. A reasonable person in Coach Rudisill's position would perceive managerial dissatisfaction and fear non-renewal when confronted by Mr. Mottola's efforts to re-determine his summer camp pay and recoup over \$115,000, immediately prior to his arbitration hearing. With the very issue of Coach Rudisill's summer camp compensation to be presented before a third-party arbitrator, there was no legitimate reason to suddenly recalculate Rudisill's compensation, after the matter had been dormant for two years, and threaten to recoup over \$115,000, within days of the arbitration hearing and after Ms. Reese refused a meeting between Mr. Mottola and Coach Rudisill.²

CONCLUSIONS

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

1. PASSHE is a public employer under PERA.
2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. PASSHE has committed unfair practices within the meaning of Section 1201(a)(1).

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

² Given the conclusion that PASSHE has violated Section 1201(a)(1) of PERA, I need not address the Union's claim under Section 1201(a)(3).

HEREBY ORDERS AND DIRECTS

that PASSHE 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 hearing 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; and

(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.

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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixteenth day of July 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE :
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AFFIDAVIT OF COMPLIANCE

The Pennsylvania State System of Higher Education hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) of the Public Employe Relations Act; that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has posted a copy of this decision and order as directed 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