

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WYOMING VALLEY WEST EDUCATION :
ASSOCIATION AND LINDA HOUCK AND :
JOANN PRUSHINSKI :
 : Case No. PERA-C-13-360-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 Employee 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. Joanne Prushinski began working for the District in 2000 as an English teacher, and in 2010, became the District's librarian for the Middle School, which houses grades six through eight. Prushinski held the Middle School librarian position until the start of the 2013-2014 school year, when she was involuntarily transferred out of the Middle School. (N.T. 19-21)
5. As the Middle School librarian, Prushinski assisted students in utilizing the library, checked out books for them, updated the resources in the library, and assisted students and teachers with their research. (N.T. 24-25)
6. Prushinski also taught Library Science classes, which included nine classes totaling 110 to 140 students. The classes addressed learning the online

¹ This matter was consolidated and heard at the same time as the case docketed at PERA-C-13-361-E because both cases involved the same parties.

catalog, research techniques, reading, and preparation for state testing (PSSA's). (N.T. 25-26, 42)

7. There was only one Middle School in the District and only one Middle School librarian, who was Prushinski. (N.T. 20)
8. Prushinski's librarian duties, including teaching the Library Science classes, were always done exclusively by her and never by anyone outside the Association's bargaining unit. More generally, the librarian duties had always been bargaining unit work performed exclusively by the Association's members, who are certified librarians in the bargaining unit. (N.T. 26, 116-117)
9. The District has study halls or periods in a school day when students are not assigned an instructional class and instead use the time to study, do homework, or have free time. The work of overseeing or monitoring study halls has always been bargaining unit work performed exclusively by the Association's members. (N.T. 120-121)
10. Prushinski was the Association's Building Representative for the Middle School for approximately 13 years. As a Building Representative, she listened to the concerns of Association members regarding their working conditions, attended the Association's monthly meetings, and represented members in disciplinary situations at the Middle School. (N.T. 22-23)
11. Before the fall of 2012, Prushinski and the Association filed a grievance under the collective bargaining agreement (CBA), challenging the District's assignment of language arts classes to Prushinski along with a change to her position requiring two teaching certifications. (N.T. 26-27; Exhibit A-1)
12. The Arbitration for Prushinski's grievance took place on August 28, 2012 and October 18, 2012. Prushinski testified on both days, with her testimony going most of the day on the first date. Association President, Linda Houck, also testified. (N.T. 27-29, 69-70; Exhibit A-1)
13. The District's Superintendent, Charles Suppon, attended both days of hearing and observed Prushinski's testimony. The District's Director of Secondary Education, David Tosh, and Middle School Principal, Deborah Troy, were also present at the start of the hearing. (N.T. 29-31, 70; Exhibit A-1)
14. On December 31, 2012, Arbitrator Jane Rigler issued an Award, sustaining the grievance in part, and denying the grievance in part. (N.T. 31-32; Exhibit A-1)
15. The District has five elementary school buildings and several librarians covering the five buildings. In the spring of 2013, one of the elementary librarian positions became vacant, and the District posted for the position on April 11, 2013. The elementary librarian position covered three buildings, each with its own library, and therefore required travel between the buildings. (N.T. 31-34, 95-96; Exhibit A-2)
16. The 2012-2013 school year ended on June 18, 2013. On that day, the District sent Prushinski written notice that her assignment for the next school year of 2013-2014 would be the same, the Middle School Librarian teaching Library Science classes. (N.T. 34-35, 94; Exhibit A-3)
17. Article II Section 16(a) of the CBA provides as follows:

In the event that a change in a professional assignment is made, the professional employee affected shall be so notified before the last day of the current school year. Such notice shall specify the building, grade level and/or subject area and courses to be taught by the employee.

In the event that a change is necessary after the last day of the current school year, the teacher affected shall be notified promptly in writing.

(Exhibit A-5)

18. Article II Section 28(F) of the CBA, entitled "Staff Reduction," provides as follows:

If it is necessary to reduce teaching staff, the School District will make such reduction, whenever possible, by attrition. The following procedures will govern the manner in which reduction shall be effected.

When the (School) Board determines that a program or programs may no longer be needed, the (School) Board will notify, in writing, both the Association and any possible affected employee by December 10th. Should the (School) Board decide after the initial December 10th notice that staff reductions may still be necessary, the (School) Board will notify, in writing, both the Association and any possible affected employee no later than April 30th following the December 10th notice. The second notice to be given by April 30th shall be sent to the same staff or a lesser number of the same staff so notified...

(Exhibit A-5)

19. The District never informed Prushinski before the end of the 2012-2013 school year that she would be transferred from the Middle School or to a vacant librarian position for the elementary schools. (N.T. 34, 38-39, 95)
20. In June 2013, the District interviewed candidates for the vacant position of Elementary Librarian. One of the candidates was Amy Houck, daughter of Association President Linda Houck. (N.T. 96-97)
21. On June 19, 2013, the School Board tabled the hiring for the elementary librarian position. (N.T. 97-101; Exhibit A-12)
22. On June 27, 2013, the District notified Prushinski that her librarian position at the Middle School was being eliminated and that she was being transferred to the elementary librarian position. Her involuntary transfer took effect at the start of the 2013-2014 school year, which was August 29, 2013. (N.T. 21, 35-37, 42; Exhibit A-4)
23. After the transfer, Prushinski taught an increased number of library classes and students. Her workload increased from nine classes and 110 to 140 students at the Middle School to 24 sections and 600 students at the elementary position. (N.T. 42)
24. 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)

25. At the time of Prushinski's transfer, the District had another librarian assigned to the High School, Patrick Keating, who had less seniority than Prushinski. In addition, Keating was certified in elementary education, as well as library science. The District did not transfer Keating to the Elementary School. (N.T. 46-47)
26. In January 2014, Prushinski bid on a vacant teaching position for Language Arts at the Middle School and received a transfer. (N.T. 23)
27. After Prushinski's initial transfer in 2013, the library at the Middle School remained open and continued to be utilized by students, who used the facilities and checked out books. However, there was no longer a librarian or bargaining unit employe assigned to the Middle School library. Instead, the District used an aide, who is not a bargaining unit employe, to supervise the library, assist students, and perform other library work. (N.T. 58-59, 119-127, 166-167, 181-182, 230, 234-238)
28. The District continued to hold Sixth Grade Library classes throughout the 2013-2014 school year, three periods a day for two days out of every six day cycle, and assigned approximately 11 students to each class. Again, the District used the aide, who is a non-bargaining unit employe, to oversee the classes, supervise the students, and offer guidance to students on research and use of technology. (N.T. 49-50, 126, 166-167, 229-230, 235-239; Exhibits A-6 & A-15)
29. Neither the Association nor Prushinski gave the District permission to assign any library work at the Middle School to people outside the bargaining unit. Nor did the District negotiate the issue with the Association or Prushinski before assigning the library work to a non-bargaining unit employe. (N.T. 48-49, 121-122)

DISCUSSION

The Association has alleged that the District violated Section 1201(a)(1) and (3) of the Act² by eliminating the Middle School librarian program and Prushinski's Middle School librarian position and transferring Prushinski to the Elementary School librarian position in retaliation for her protected activity. The Association also contends that the District violated Section 1201(a)(1) and (3) of the Act by refusing to hire Amy Houck, daughter of the Association President Linda Houck, for the vacant Elementary School librarian position in retaliation for the Association President's protected activity. In addition, the Association avers that the District violated Section 1201(a)(5) of the Act by unilaterally transferring Prushinski's Middle School librarian duties to a non-bargaining unit employe without bargaining with the Association.

The District, meanwhile, argues that the charge should be dismissed as untimely since it was filed more than four months after the Association knew or should have known of the acts giving rise to the cause of action. Similarly, the District asserts that it had a legitimate business reason for eliminating the Middle School librarian position, transferring Prushinski to the Elementary School librarian position, and not hiring the Association President's daughter for the vacant Elementary School librarian position. Further, the District submits that the alleged Section 1201(a)(5) claims should be deferred to the grievance arbitration proceedings.

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.

Preliminarily, the District has raised a timeliness argument under Section 1505 of PERA. According to the District, the charge should be dismissed as untimely because Prushinski and the Association knew or should have known of the alleged unfair practice on June 27, 2013 when Prushinski was notified of her impending transfer. And, the Association did not file the instant charge until December 19, 2013, (N.T. 16), which was well beyond the four month limitations period provided for in the Act. This argument is without merit.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." 43 P.S. § 1101.1505. It is well settled that the statute of limitations begins to run from the date of implementation. **Fraternal Order of Transit Police v. Southeastern Pennsylvania Transportation Authority**, 36 PPER 14 (Final Order, 2005). Implementation is the date when the directive becomes operational and serves to guide the conduct of employees, even though no employees may have been disciplined or corrected for failure to abide by the directive. *Id.* Mere statement of future intent to engage in activity, which arguably would constitute an unfair practice, does not constitute an unfair practice for engaging in that activity. **Robert L. Dospoy v. Harmony Area School District**, 41 PPER 150 (Proposed Decision and Order, 2010) *citing Officer of the Upper Gwynedd Township Police Department v. Upper Gwynedd Township*, 32 PPER 32101 (Final Order, 2001).

In this case, the four-month limitations period contained in Section 1505 of PERA did not begin to run on June 27, 2013. On that date, the District simply provided a statement of future intent regarding the transfer. The District's School Board could have changed its mind before the transfer actually took effect. The District did not implement the transfer until the start of the 2013-2014 school year on August 29, 2013 when Prushinski actually began her assignment at the Elementary Schools. Accordingly, the statute did not begin to run until August 29, 2013. Therefore, the Association's December 16, 2013 charge was timely, as it was clearly filed within four months of implementation.

With respect to the Association's Section 1201(a)(5) claim, it is well settled that the removal of bargaining unit work is a mandatory subject of bargaining and an employer commits an unfair practice when it fails to bargain with the exclusive representative before transferring bargaining unit work to an employee outside the unit. **Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District**, 37 PPER ¶ 30 (Proposed Decision and Order, 2006) *citing Midland Borough School District v. PLRB*, 560 A.2d 303 (Pa. Cmwlth. 1989); **PLRB v. Mars Area School District**, 389 A.2d 1073 (Pa. 1978). The complainant in an unfair practices proceeding has the burden of proving the charges alleged. **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977).

The Association has sustained its burden of proving the District violated Section 1201(a)(5) of PERA. The record shows that after Prushinski's transfer in August 2013, the library at the Middle School remained open and continued to be utilized by students, who used the facilities and checked out books. However, there was no longer a librarian or bargaining unit employe assigned to the Middle School library. Instead, the District used an aide, who is not a bargaining unit employe, to supervise the library, assist students, and perform other library work. Likewise, the District continued to hold Sixth Grade Library classes throughout the 2013-2014 school year, three periods a day for two days out of every six day cycle, and assigned approximately 11 students to each class. Again, the District used the aide, who is a non-bargaining unit employe, to oversee the classes, supervise the students, and offer guidance to students on research and use of technology. These duties previously belonged exclusively to the Association's bargaining unit. Neither the Association nor Prushinski gave the District permission to assign any library work at the Middle School to people outside the bargaining unit. Nor did the District negotiate the issue with the Association or Prushinski before assigning the library work to a non-bargaining unit employe.

The District submits that this is just a temporary situation, and in the future, there will be more of an open venue in the library and research based projects overseen by classroom teachers. However, as the Association points out, this is not a viable defense to a removal of bargaining unit work charge. Indeed, the Commonwealth Court has

held that a public employer commits an unfair labor practice when it unilaterally transfers **any** unit work to non-members without first bargaining with the unit. **City of Harrisburg v. PLRB**, 605 A.2d 440, 442 (Pa. Cmwlth. 1992) (emphasis in original). See also **Crestwood Educational Support Personnel Ass'n v. Crestwood School District**, 45 PPER 102 (Proposed Decision and Order, 2014), 46 PPER 23 (Final Order, 2014) (finding an unlawful removal of bargaining unit work even though the arrangement continued for only a period of several months).³ As such, the District has committed unfair practices under Section 1201(a)(5) of PERA.

With regard to the Association's Section 1201(a)(3) discrimination claims, 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).

The Association has sustained its burden of proving the first two prongs of the Section 1201(a)(3) test. First of all, Prushinski clearly engaged in protected activity under the Act. She was the grievant in a grievance arbitration proceeding in which she protested the District's assignment of certain duties to her. Likewise, she testified at length during the arbitration hearings and helped secure an Award which was at least partially favorable for her and the Association. Further, she served as a Building Representative for the Association for approximately 13 years. Similarly, the District was aware of her protected activity, as the District's most prominent officials including

³ The District also submits that the removal of bargaining unit work portion of the charge should be deferred to the grievance arbitration proceedings. In **Pine Grove Area School District**, 10 PPER ¶ 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979), the Board indicated that it will defer to grievance arbitration where: (1) a grievance has been filed, (2) the unfair practice charge is rooted in the parties' contract and (3) the conduct which is the subject of the grievance does not involve alleged discrimination toward the exercise of protected employe rights. The deferral standard has not been satisfied in this case. The charge here is not rooted in the parties' contract. Indeed, the contract is devoid of any provision addressing either directly or indirectly the removal of bargaining unit work. Likewise, the grievance does not protest the removal of bargaining unit work specifically, nor does it cite any provision governing the same. Therefore, deferral is not appropriate.

the Superintendent, were present for her arbitration hearing. Indeed, the Superintendent observed her testimony during these proceedings. As such, the issue in this case is whether the District was motivated by Prushinski's protected activity when it eliminated the Middle School librarian position and transferred her to the vacant Elementary School librarian position.

The Association did not present any direct evidence of unlawful motive during the hearing. Instead, the Association is relying on several factors which it contends support an inference of unlawful motive here. Specifically, the Association points out that Prushinski's duties increased significantly once she was transferred to the Elementary School librarian position. In the same vein, the Association points out that the District did not decide to eliminate the Middle School librarian position and transfer Prushinski until after she testified at the arbitration proceedings and secured a partially favorable Award. Further, the Association posits that the transfer violated the CBA, which required the District to follow inverse seniority when transferring someone involuntarily. And, the Association contends that the transfer negatively impacted Prushinski's ability to serve as a Building Representative, as she was forced into three new buildings for which she did not have intimate knowledge of the working conditions, and had to travel between them.

I have reviewed each of the factors which the Association contends support an inference of unlawful motive, both individually and in the aggregate. However, even if these factors support an inference of discriminatory intent on behalf of the District, I credit the District's proffered reason for the adverse employment action, namely the creation of a media center for the Middle School. Superintendent Charles Suppon testified credibly that the Middle School Principal, Debra Troy, had asked him about the possibility of creating a media center. (N.T. 161). The purpose of a media center is to have the students come to the computer technology physically located in the library area with their core content area teacher to help with the research. (N.T. 161). Suppon emphasized that this arrangement aligns the District closely with the Pennsylvania Common Core Standards. (N.T. 162). Suppon felt that teaching students how to use the library was most critical at the elementary level, which is consistent with Chapter 4 of the Pennsylvania School Code, which designates grade 4 as the level library instruction is needed. (N.T. 164-165). The ultimate decision to utilize the Middle School library as a media center was made by the School Board, based on Suppon's recommendation. (N.T. 165).

David Tosh, the Director of Secondary Education, who oversees the High School and Middle School, explained that Prushinski was teaching Library Science classes of only 11 students or so, which could be as few as five or six with absenteeism, and that there were a number of teachers at the Middle School who wanted to use the technology in the library more frequently. (N.T. 228, 250). Tosh stated that the District could more efficiently educate the Middle School by creating a media center. (N.T. 250-251). Troy, the Middle School Principal, described how use of the Library Science curriculum was dwindling and the position of Middle School librarian was not needed as it had been in the past. (N.T. 227-228). There was a growing trend in most districts to create more research driven media centers. (N.T. 227). Indeed, Troy described how it made more sense, given the dwindling Library Science curriculum and the ability of the District to align with Common Core Standards through core content teachers, to turn the library into a media center. (N.T. 227-228). As a result, this was her recommendation to Suppon. (N.T. 228).

The credible evidence, therefore, supports a finding that the District had a legitimate business reason for eliminating the Middle School librarian position and transferring Prushinski to the vacant Elementary School librarian position. Similarly, I also credit the District's proffered reason for why it transferred Prushinski to the Elementary School position, and not Keating, who was the High School librarian. Although Keating had less seniority than Prushinski, Suppon convincingly explained that it did not make sense to move Keating because then the District would have had to make two transfers, i.e. Prushinski to the High School and Keating to the Elementary School, instead of just one. (N.T. 170-171). In any case, it is not even clear that the District repudiated or violated the CBA in this regard. While the Association submits that the CBA requires the District to follow inverse seniority when transferring someone

involuntarily, this provision is relative to vacancies which occur between August 1 and the day prior to the first scheduled school day. (Exhibit A-5, Article II Section 28(C.5)). The vacancy for the Elementary School librarian position was initially posted in April 2013. Likewise, Prushinski received notice of her assignment to the position on June 27, 2013. As such, it is questionable whether or not the vacancy occurred between August 1 and the day prior to the first scheduled school day. To uphold the Association's position, I would have to determine that the vacancy continued to occur after August 1, 2013, despite the initial occurrence in April 2013. However, this determination is best left for an arbitrator. While the District still may have violated the CBA in this regard, I am unable to discern any clear repudiation or violation which would support an inference of unlawful motive on behalf of the District.

The same result must obtain relative to the Association's Section 1201(a) (3) discrimination claim regarding Linda Houck. The Association has demonstrated that Houck engaged in protected activity by testifying in the same grievance arbitration proceedings as Prushinski. (N.T. 69). The Association has also established that the District was aware of Houck's protected activity, as some of its most prominent officials, including the Superintendent were present for those proceedings. (N.T. 69-70). As was the case with Prushinski's claim, the Association sets forth a number of factors, which it argues support an inference of unlawful motive relative to Houck. Specifically, the Association points out that the District posted for the vacant Elementary School librarian position in April 2013 and sent Prushinski notice in June 2013 that her assignment for the next school year would be the same, i.e. Middle School librarian. Shortly thereafter, the District interviewed candidates for the vacant Elementary School position which included Amy Houck, daughter of the Association President, Linda Houck. However, the same day the District interviewed Amy Houck, the School Board tabled the hiring for the Elementary School position and changed Prushinski's work assignment approximately one week later on June 27, 2013 to the Elementary School position. The Association submits that this is highly suspicious timing and that the District violated the CBA by not giving Prushinski notice before the end of the school year that her assignment would change. The Association further contends that the District gave inconsistent explanations for the conduct, as Prushinski was informed of a need to reduce teaching staff, as well as budgetary and financial reasons, but then the District claimed it was the creation of a media center at the hearing.

Once again, I have reviewed each of the factors which the Association contends support an inference of unlawful motive, both individually and in the aggregate, and I credit the District's proffered reason for the adverse employment action, namely the creation of a media center for the Middle School. The record does not support an inference of unlawful motive for the District's decision not to hire Amy Houck. The School Board has directed Suppon that whenever a vacancy occurs, he is to meet with the management team and determine if the same services can be provided by eliminating that position through attrition. (N.T. 161). The Superintendent has always given guidance concerning position vacancies that his cabinet is to look at current schedules, openings, and student numbers to see if there is a way to fill or absorb a position to save the District from hiring based on a tight budget. ((N.T. 205-206). In any event, Amy Houck was fourth out of four candidates for the vacant Elementary School librarian position. (N.T. 262). And, although there was a recommended candidate for the vacant position in June 2013, it was not the Association President's daughter. (N.T. 169). Furthermore, the District did not give inconsistent explanations for the adverse employment action here. The need to reduce teaching staff and budgetary reasons proffered in June 2013 were entirely consistent with the creation of a media center. In creating a media center, the District was able to absorb the vacant Elementary School position by filling it with the Middle School librarian, and avoid hiring someone from outside the bargaining unit. The fact that the District may have unartfully communicated this to Prushinski and the Association in June 2013 is scant evidence of unlawful motive, especially in light of the record here. Accordingly, the Association's Section 1201(a) (3) allegations of discrimination will be dismissed.

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*. In light of the growing trend to create media centers in public education, the dwindling curriculum for Library Science classes at the Middle School, along with the District's tight budget and direction to absorb positions whenever possible, the decision to not hire Amy Houck for the vacant Elementary School librarian position and to instead transfer Prushinski would not tend to coerce other employes. Therefore, the Association's allegation of an independent Section 1201(a)(1) violation must also be dismissed.

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 (5) of PERA.
5. The District has not committed unfair practices in violation of Section 1201(a)(3) of PERA.
6. The District has not committed an independent violation of Section 1201(a)(1) 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 refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.
3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:
 - (a) Return the Middle School librarian work to the bargaining unit;
 - (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.

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

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

WYOMING VALLEY WEST EDUCATION :
ASSOCIATION AND LINDA HOUCK AND :
JOANN PRUSHINSKI :
 : Case No. PERA-C-13-360-E
v. :
 :
WYOMING VALLEY WEST SCHOOL DISTRICT :

AFFIDAVIT OF COMPLIANCE

Wyoming Valley West School District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) 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