

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSBURY EDUCATION ASSOCIATION :
v. : CASE NO. PERA-C-14-351-E
PENNSBURY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On October 30, 2014, the Pennsbury Education Association (Union or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Pennsbury School District (District) violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA or Act). The Union specifically alleged that the District discriminated against the Union’s President when the Superintendent directed him to attend after school meetings, which also allegedly chilled Union advocacy by publicly humiliating the Union President in front of the teaching staff, given that he was historically and contractually excused from those meetings.

On November 7, 2014, the Secretary of the Board issued a complaint and notice of hearing, directing that a hearing be held on May 15, 2015, in Harrisburg. On November 10, 2014, the Union filed an amended charge, and on November 13, 2014, the Secretary of the Board issued an amended complaint and notice of hearing, again directing that a hearing be held on May 15, 2015, in Harrisburg. On December 1, 2014, the District filed an answer to the amended complaint. On May 13, 2015, I granted the Union’s request to continue the hearing, without objection from the District, and rescheduled the matter for December 18, 2015. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On February 12, 2016, the Union filed its post-hearing brief. On March 11, 2016, the District filed its post-hearing brief.

The examiner, based upon all matters 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. 3-4)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3-4)
3. George Miller is a teacher of advanced placement mathematics at Pennsbury High School East. He has also been the Union President since July 1, 2006. (N.T. 10-13)
4. Dr. Kevin McHugh has been the District’s Superintendent since July 1, 2011. Prior to becoming Superintendent, Dr. McHugh was the Assistant Superintendent of Curriculum and Instruction. Prior to becoming the Assistant Superintendent, Dr. McHugh was the Pennwood Middle School Principal for twelve years. (N.T. 71-72)
5. Dr. Donna Dunar is the Assistant Superintendent of Curriculum and Instruction for the District. Shawn Neely is a Co-Principal at Pennsbury High School East, the building in which Mr. Miller works. Dr. Lynne Blair, at the time, was the High School Assistant Principal assigned to the Math Department. Dr. McHugh, Dr. Dunar, Mr. Neely and Dr. Blair are in Mr. Miller’s direct line of supervision. (N.T. 80-81, 98; Association Exhibit 2)
6. The District stipulated and agreed that the District is aware that Mr. Miller has engaged in protected activities. In 2005, Mr. Miller was the strike captain during a work stoppage, and he was a member of the settlement task force. The strike ended in 2005 with a settlement in early 2006. Mr. Miller has spoken publicly at school board meetings, and he has written editorials for the local paper about Union matters. (N.T. 11-15, 24)

7. Mr. Miller processes grievances beyond the second level of the grievance procedure. He presents grievance appeals to the Superintendent. If the Superintendent and Mr. Miller are unable to resolve the grievance, Mr. Miller appeals the grievance to the school board. Mr. Miller has settled grievances. (N.T. 20-22)
8. Mr. Miller has testified on behalf of the Union at grievance arbitrations. Mr. Miller is the face of the Union. He has dealt with all building principals in his Union leadership capacity. (N.T. 21-22)
9. Simon Campbell was a vocal anti-union parent during the 2005 strike. He referred to Mr. Miller as "Union Boss" and "Union Thug." Mr. Miller and Mr. Campbell had a notoriously adversarial relationship. (N.T. 13, 15, 19)
10. Mr. Campbell was eventually elected to the school board in the fall of 2006 beginning his term in 2007. Mr. Campbell became Vice-President of the school board. (N.T. 14-15)
11. The Union and the school board became very adversarial after Mr. Campbell became a school board member. Mr. Campbell made television appearances and circulated flyers attempting to show that the Union was wasting taxpayers' money. Mr. Campbell led an organization called "Stop Teachers' Unions" or "Stop Teachers' Strikes." (N.T. 15-16)
12. In 2009, Mr. Miller was the lead contract negotiator. These negotiations were adversarial. The District's solicitor at the time characterized the District's proposal as "Draconian." The employes obtained a contract extension for one year and then they went without a contract for three years until participating in fact-finding. (N.T. 17-19)
13. As a math teacher, Mr. Miller has never received a negative rating. He received positive reviews from administrators when those administrators were permitted to write narrative reviews. On the new forms instituted in 2014, Mr. Miller has received the designation of "distinguished" and recently received the designation "proficient." (N.T. 23)
14. Appendix A, Section J of the collective bargaining agreement (CBA) is entitled "RELEASE TIME-ASSOCIATION PRESIDENT." Section J(2) provides as follows:

§ 2. If, and only if, the Association President is assigned to a high school building and if intensive scheduling is in effect, he or she shall be assigned two consecutive teaching periods per day, which shall, if possible, be the first two periods of the day. The remainder of the day will be release time.

(Association Exhibit 1 at p. 53)

15. Intensive scheduling means that the class periods are 90 minutes in duration rather than 45 minutes. Under Appendix A, Section J(2), Mr. Miller teaches the first two periods of the day, which are 90 minutes long. He usually finishes his teaching day by 11:00 a.m. and thereafter he has the right to leave the premises to address Union business. (N.T. 25-26)
16. All teachers are required to attend after school meetings. There are two types of after school meetings and there are thirteen after school meetings in total. The meetings are 45 minutes to one hour in duration. Department meetings are conducted by a department chair and are limited to the faculty members of a given department. Faculty meetings are larger meetings with 235-240 faculty members throughout the District in attendance. The meetings are designed to obtain ideas and input from the faculty and to inform faculty of changes. Dr. McHugh believes that obtaining documents does not provide a teacher with an adequate understanding of the nuances and details that can only be obtained through professional interaction. (N.T. 26-27, 54, 76-77, 85, 89-90, 100-101, 108, 113; Association Exhibit 1 at p. 7)
17. Prior to October 8, 2014, Mr. Miller did not attend any after school meetings, and no administrator directed him to do so. Mr. Miller has been Union President under three

Superintendents and three Human Resources Directors. He obtained information and documents about the meetings from colleagues. Mr. Miller's understanding is that he cannot be required to attend those meetings because the CBA, Appendix A, Section J(2) releases him from those meetings. (N.T. 27-29; Association Exhibit 1)

18. The administrators at Pennsbury High School East, where Mr. Miller teaches, knew that he did not attend after school meetings. (N.T. 30-32; Association Exhibit 3)
19. During the 2013-2014 school year, Act 82 went into effect and changed the manner in which teacher evaluations were to be conducted. Act 82 required an actual observation framework based on four domains of instructional practices. Act 82 requires administrators to perform teacher evaluations based on input and evidence obtained from the teachers. In implementing Act 82, it was necessary for the District to provide professional development training to the teachers about their new duties and responsibilities in effectuating the evaluation/observation process. Teachers have a large role in the new evaluation process. Training faculty in the online and technology components of Act 82 was the most challenging. (N.T. 73-74, 90-92, 100-101, 108-109)
20. Teacher evaluations, under Act 82, are tied to student performance. The District provided teacher training for these changes through the thirteen after school meetings. At the same time as Act 82 changes were being implemented, the District was retooling and upgrading its technology infrastructure. These changes were being communicated to teachers through the thirteen after school meetings. (N.T. 73-74)
21. The District was also changing its grading system at this time. The changes to student grading parameters and practices were controversial. Professional teacher dialogue was necessary to reach a consensus on the changes. The student information and attendance systems were being overhauled as well as the District's final exam process. All these changes were discussed at after school department meetings. (N.T. 75, 85)
22. Dr. McHugh credibly testified that time for professional development is limited, and teacher education must be done after the school day at faculty and departmental meetings throughout the school year. (N.T. 74-75)
23. Dr. McHugh learned of Mr. Miller's absence from after school meetings sometime after becoming Superintendent. He was made aware that this caused Mr. Miller's deficiencies in learning the necessary changes in the spring of 2014. The High School Co-Principal, Mr. Neely, informed Dr. McHugh that Mr. Miller was not aware of the changes being implemented because he had not attended any after school meetings. A copious amount of technical information is delivered during the department development meetings. That amount of information is unobtainable from meeting minutes or an overview from a colleague. (N.T. 77-78, 86, 101)
24. During administrative meetings with Mr. Miller, as the teachers' Union representative, the Director of Technology and the Assistant Superintendent, Dr. McHugh personally observed that Mr. Miller did not fully understand the Student Learning Objectives process and the new technology, the training for which occurred during after school meetings. Dr. McHugh's own observations were fortified by Mr. Neely and Dr. Blair. (N.T. 73-78, 96)
25. Through the spring and fall of 2014, Dr. McHugh had several private conversations with Mr. Miller asking him to voluntarily attend after school department meetings. Dr. McHugh informed Mr. Miller that the meetings addressed important matters for the District and, as a teacher-leader, it was important for Mr. Miller to understand and be conversant in those changes. Mr. Miller had told both Dr. McHugh and Mr. Neely that the contract prevents him from attending after school meetings. Simon Campbell was no longer a member of the school board at this time. (N.T. 79-80, 82, 84, 102-103, 106)

26. Mr. Miller did not attend after school meetings after Dr. McHugh asked him to attend several times. On October 8, 2014, Dr. McHugh held one more private meeting, with just the two of them present, asking Mr. Miller to attend after school meetings. Mr. Miller responded that he just cannot attend the meetings. (N.T. 79-80, 102-103, 106, 119)
27. During that private meeting on October 8, 2014, and after Mr. Miller refused to attend meetings, Dr. McHugh gave Mr. Miller a letter directing him to attend after school meetings. (N.T. 72-73; Association Exhibit 2)
28. The October 8, 2014 letter provides, in relevant part, as follows:

It has come to my attention that you have verbally refused to attend the monthly required Mathematics department meetings which are scheduled at Pennsbury High School. Apparently, you have stated to Dr. Lynne Blair, Assistant Principal, that it is "against your contract" to attend and that you must strictly follow the provisions of your contract, specifically citing the release time clause for the union president.

In reviewing the section of the contract you cite (Appendix A, Paragraph J, Section 2), you are assigned the first two teaching periods of the day and then, "the remainder of the day will be release time." In accordance with Article X, Section 1, of the collective bargaining agreement, the monthly math department meetings are required meetings that take place outside of the teacher work day, and therefore after your release time ends.

Your position of employment with the District is as a professional educator. You are obligated to fulfill all aspects of that position as your primary responsibility to your employer. It is your professional responsibility, as well as your contractual obligation, to attend the required departmental and faculty meetings which are scheduled. I find no provision in the contract that exempts the union president from attending the 13 meetings required by Article X, Section 1. Therefore, in accordance with Article X, Section 1, I am directing you to attend the math department meetings and faculty meetings as scheduled.

(Association Exhibit 2)

29. Dr. McHugh did not publicly announce that he directed Mr. Miller to attend after school meetings. Mr. Miller can be excused from any after school meeting that conflicts with his Union duties and obligations. Also, a coach that has a conflicting practice or game may be excused from an after school meeting after attending for fifteen minutes. (N.T. 81-82, 89-90)
30. Since the October 8, 2014 directive, Mr. Miller has been attending after school meetings. (N.T. 51)
31. In the fall of 2014, the Union was preparing for the next round of bargaining to begin in January 2015. The Union's Uniserv Representative had engaged in some discussions with the District's Chief Negotiator and requested various wage matrices. Mr. Miller expected difficulty in bargaining because of a backlog in wages created by a wage freeze and no wage adjustments for educational advances. (N.T. 39-45)

DISCUSSION

As an initial matter, during the hearing, the District presented a motion for directed verdict in the nature of a motion to dismiss the Union's claims for failure to establish a prima facie case for either a 1201(a)(1) or 1201(a)(3) violation. After hearing arguments, I dismissed the District's motion. (N.T. 61-68).

DISCRIMINATION 1201(A)(3)

The Union argues that the District violated Section 1201(a)(3) of the Act and discriminated against Mr. Miller on October 8, 2014, when Dr. McHugh directed Mr. Miller to attend after school faculty and departmental meetings, in violation of the parties' past practice, and their CBA. In a discrimination claim, the complainant has the burden of establishing that the employer knew that the employee engaged in protected activity and that the employer implemented adverse employment action that was motivated by the employee's protected activity. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. **Borough of Geistown v. PLRB**, 679 A.2d 1330 (Pa. Cmwlth. 1996); **York City Employees Union v. City of York**, 29 PPER ¶ 29235 (Final order, 1998). An employer's lack of adequate reason for the adverse action taken may be part of the employee's prima facie case. **Stairways, supra**; **Teamsters Local 312 v. Upland Borough**, 25 PPER ¶ 25195 (Final Order, 1994).

The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). These factors include the entire background of the case, including any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employee, the effect of the employer's adverse action on other employees and protected activities, and whether the action complained of was "inherently destructive" of important employee rights. **Centre County**, 9 PPER at 380.

On this record, it is undisputed that the District was well aware of Mr. Miller's extensive Union activities as Union President and before. However, the record does not establish that Dr. McHugh directed Mr. Miller to attend after school meetings in retaliation for Mr. Miller's Union activities. The record shows that Dr. McHugh was never aligned with the anti-union bargaining campaign and statements of Simon Campbell or the school board that Campbell influenced. There is also no nexus between Dr. McHugh's directing Mr. Miller to attend after school meetings and the strike in 2005, adversarial contract negotiations in 2009, Mr. Miller's grievance filings, his Union advocacy or the Campbell dominated school board, which no longer exists.

The fact that the District and the Union were preparing for contentious bargaining in the fall of 2014, when Dr. McHugh's directive was issued, is not by itself evidence that Dr. McHugh wanted to retaliate against Mr. Miller in any way for his Union activities. Even during the name calling by Mr. Campbell (that Mr. Miller was a so-called "Union Thug" and "Union Boss"), no adverse employment action had ever befallen Mr. Miller. Dr. McHugh has been the District Superintendent since July of 2011. The record lacks evidence that Dr. McHugh ever demonstrated any anti-Union animus or that he engaged in any retaliatory conduct against Mr. Miller or anyone else for their Union activities at any time since becoming Superintendent or as Assistant Superintendent of Curriculum and Instruction or as the Pennwood Middle School Principal.

The record does establish that Dr. McHugh and Mr. Miller have a good working relationship. Contrary to the Union's position here, the record shows that Dr. McHugh did not want to direct or order Mr. Miller to attend the after school meetings. Dr. McHugh went out of his way to have private conversations with Mr. Miller about voluntarily attending the meetings throughout the spring and fall of 2014. Accordingly, viewing the entire background of the case, the Union did not meet its burden of establishing a prima facie case of discrimination by Dr. McHugh against Mr. Miller.

Not only did Dr. McHugh lack any unlawful motive in directing Mr. Miller to attend the after school meetings, the uncontradicted evidence of record clearly establishes that Dr. McHugh credibly, legitimately and genuinely needed Mr. Miller to attend the after school meetings to develop a necessary understanding of the many and various technological and pedagogical changes occurring at the District after Mr. Miller repeatedly demonstrated his lack of understanding of those changes. For a semester and one-half, District administrators observed that Mr. Miller was not literate in the necessary grading and evaluation changes that had been made. Although Mr. Miller defended that it had been his practice to obtain the information from colleagues and his department head after the meeting, that process proved unworkable during this

time of complex change as demonstrated by Mr. Miller's lack of understanding regarding the changes being implemented.

Dr. McHugh credibly testified that the abundance of information, the nuances of that information and the technological complications of the changes being implemented depended on professional interaction in which Mr. Miller refused to participate. Also, the departments needed the professional input from all its teachers to build an appropriate resolution, if not consensus, in determining the controversial changes to the grading system at the District. Dr. McHugh also credibly testified that Mr. Miller, as an advanced placement math teacher and the Union President, is one of the leaders on the teaching faculty at the District. The District, the Math Department and his colleagues would certainly place great weight upon and benefit from his particular input during these meetings.

Mr. Neely credibly testified that full attendance of ALL teachers at after school meetings is required. Full attendance is necessary because the District has no other opportunity to provide the professional development and training on new laws, technology, educational techniques, grading and evaluations that occur during those meetings. Any teacher can be excused from a particular meeting if the teacher has a legitimate conflict with the meeting. Coaches with a game or a practice scheduled may be excused only after they attend for at least fifteen minutes. Mr. Miller would also be excused if he had a legitimate conflict with a particular meeting.¹ In this regard, the Union did not establish disparate treatment with the coaches or any other professional staff members.

The Union contends that the pretextual nature of the District's proffered business reasons supports the Union's case for discrimination. (Union's Post-hearing brief at 7-8). In support of this argument, the Union emphasizes that Dr. McHugh's October 8, 2014 letter directing Mr. Miller to attend after school meetings makes no mention of the reasons offered during the hearing (i.e., changes in teacher evaluations, Act 82, modifications to the District's technology infrastructure, etc.). (Union's Post-hearing Brief at 8). The Union further argues that Dr. McHugh acknowledged that the education environment is constantly changing and that the meetings were always used to educate the teachers about those changes and yet Mr. Miller was never required to attend the after school meetings until October 8, 2014. (Union's Post-hearing Brief at 8-9). The Union further claims that the District's reasons are pretextual because Co-Principal, Mr. Neely, testified that Mr. Miller could obtain the information disseminated at the department meetings and that the administration was willing to help Mr. Miller if there was something he did not understand. (Union's Post-hearing Brief at 9).

However, I credit Dr. McHugh's testimony and I conclude that the proffered reasons were not pretextual. The Union's pretext argument ignores the fact that, even though the letter does not specifically mention the reasons offered at the hearing, Dr. McHugh and Mr. Neely had multiple private conversations with Mr. Miller about his lack of attendance at the meetings and the fact that he was missing important information about complex changes at the District. The Union's argument also ignores the fact that Dr. McHugh did not previously direct Mr. Miller to attend the meetings because he was unaware that he was not attending the meetings until Mr. Miller's lack of understanding of the necessary complex changes were reported back to him. Therefore, the Union's argument is not supported by the record. Mr. Miller was indeed informed of the reasons for his required attendance several times prior to the letter. It was the very fact that Mr. Miller demonstrated a lack of understanding about the complex changes being implemented at the time that alerted the administration that business as usual (where Mr. Miller was simply handed the information about the meeting) was no longer adequate. Had Mr. Miller demonstrated a sufficient understanding of the changes by acquiring documents and briefings from colleagues and administration staff, there would have been no administrative complaints to Dr. McHugh and no need to direct Mr. Miller to attend the meetings.

Moreover, the letter was focused on the reason Mr. Miller gave to District administrators for not attending the meetings, which was that the contract arguably prohibits Mr. Miller's attendance at the after school meetings. In issuing the directive, after pleading with Mr. Miller to attend those meetings, Dr. McHugh focused on rebutting Mr. Miller's interpretation of the CBA. The record clearly establishes that

¹ To the extent that after school meetings are scheduled in advance, Mr. Miller would be expected to ensure, as best he can, that Union business was not scheduled at the same time as an after school meeting and that Union business conflicts were not used as a way to avoid compliance with Dr. McHugh's directive or this order.

ALL, teachers, including coaches must attend after school meetings without exception, unless there is a demonstrated conflict. Dr. McHugh did not fabricate pretextual reasons at the hearing simply because those reasons were not included in his letter, where those reasons had already been provided to Mr. Miller. The letter properly focused on rebutting Mr. Miller's repeated reasons for refusing to attend those meetings. In issuing the directive, Dr. McHugh simply dealt with the contract dispute rather than reiterating the reasons why it was necessary for him to attend.

Accordingly, the record does not show that Dr. McHugh was unlawfully motivated in issuing the October 8, 2014 directive to Mr. Miller to attend after school meetings. Moreover, the record does indeed show that Dr. McHugh possessed credible and legitimate managerial reasons for directing Mr. Miller to attend those meetings after personally observing, and hearing from other administrators, over a period of almost one year, that Mr. Miller was not understanding or learning all the necessary changes in grading, evaluations, teaching and technology occurring at the District during the time period.

COERCION INDEPENDENT 1201(a)(1)

The Union argues that the District committed an independent violation of 1201(a)(1) because he was bombarded with questions from Union members regarding his sudden presence at the meetings, given the known history of his excused absences as Union President. (Union's Post-hearing Brief at 10-11). Consequently, maintains the Union, Dr. McHugh's directive had a chilling effect on the exercise of employe rights. (Union's Post-hearing Brief at 11). The Union contends that Union "members, who may want to be Union officials, see this directive as an intimidating sign that even the Union President is not immune to the District's coercive actions." (Union's Post-hearing Brief at 11). The Union also contends that employes' rights would be chilled because the District disregarded the CBA provision that has been interpreted by prior administrations as providing release time to the Union president. Employes would perceive the District's actions as having little respect for other CBA provisions. (Union's Post-hearing Brief at 11).

An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions have 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).

Under the totality of the circumstances in this case, a reasonable employe in the bargaining unit would not be coerced or intimidated, with respect to exercising his/her protected rights under the Act, by Dr. McHugh's directive. To the extent that a reasonable employe may have experienced coercion, such coercion is outweighed by the legitimate business reasons for Dr. McHugh's actions. The District had a credible and legitimate business reason to direct Mr. Miller to attend after school meetings. Although Mr. Miller had not been required to attend meetings in the past, the complex nature and variety of changes being implemented by the District changed the landscape with respect to professional development and the necessary commitment from teachers.

Mr. Miller is first and foremost a teacher at the District. His Union leadership position also makes him a lead teacher and an example to others. All teachers are required to attend after school meetings and all teachers are responsible for learning and understanding the pedagogical and technical changes being implemented at the District. Dr. McHugh credibly testified that he had received multiple consistent reports in addition to his own observations that Mr. Miller was not learning the changes presented to the professional staff through the after school meeting process. Those reports triggered Dr. McHugh's responsibility as Superintendent to rectify a professional problem that interfered with the District's ability to implement changes, which was Mr. Miller's lack of understanding of those changes.

The reasonable person standard requires an assessment of the reasonable person under the totality of the circumstances including knowledge of all the relevant facts involved in the employer's actions and the reasons for those actions. A reasonable employee knowing that Dr. McHugh attempted on multiple occasions to privately seek Mr. Miller's voluntary participation in after school meetings after Dr. McHugh learned that Mr. Miller was not understanding the changes being implemented at the District would certainly not be coerced in the exercise of employee rights under the Act. The District has a right to direct its teachers, like Mr. Miller, to attend contractually mandated meetings where those meetings are the vehicles for presenting vast amounts of information on changes at the District.

Notwithstanding whether a reasonable employee would be coerced, an employer does not violate Section 1201(a) (1) where, as here, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. **Ringgold Educ. Ass'n v. Ringgold Sch. Dist.**, 26 PPER 26155 (Final Order, 1995). In this case, the District's legitimate reasons significantly outweigh any coercive effect on unit employees. The District credibly established a legitimate need to have all educators attend contractually required after school meetings to obtain a full understanding of necessary changes imposed by the District and by law. The District had a further legitimate interest in requiring Mr. Miller to attend after school meetings in the face of reports that Mr. Miller did not fully understand those changes even after he obtained the information from administrators and staff regarding the meetings.

Also, contrary to the Union's argument, a reasonable employee would not believe that the District disregarded the contract in any manner or that the District would unilaterally disregard any other provision of the contract. A reasonable employee, aware of the totality of circumstances and all the relevant information that were part of the decision, would understand that Dr. McHugh demonstrated a reasonable basis for his reading of the "Release-Time" provision of the CBA and for his conclusion that such provision did not apply to release the Union President from after school meetings. Although the contract interpretation question is not before me, it is clear that the Union's characterization of the District's actions as "disregarding" the contract is not accurate and the District's interpretation is certainly viable, even though an arbitrator may have agreed with the Union if a grievance had been timely filed.

There simply is no factual predicate for the Union's claims that the District disregarded the contract. Therefore, the claim of contract repudiation will not support an independent 1201(a)(1) violation under the theory that employees would perceive that the District would be willing to unilaterally disregard or repudiate other contractual provisions.² To the extent that a reasonable employee, under the totality of the circumstances, may be coerced or intimidated by the District's unilateral change in a known past practice of excusing Mr. Miller from after school meetings, I find that, as previously stated above, the District's legitimate reasons for needing Mr. Miller to attend the meetings justifiably outweigh concerns over the interference with employee rights. **Ringgold Educ. Ass'n v. Ringgold Sch. Dist.**, 26 PPER 26155 (Final Order, 1995).

Accordingly, the District did not violate Section 1201(a)(1) independently or Section 1201(a)(3).

CONCLUSIONS

The hearing 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 under PERA.
2. The Union is an employee organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has **not** committed unfair practices within the meaning of Section 1201(a)(1) independently or Section 1201(a)(3).

² Although the District may have violated a known past practice, there is no claim for a bargaining violation before me for consideration.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge 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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourteenth day of September, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner