

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TROY AREA EDUCATION ASSOCIATION, :
PSEA/NEA :
 : CASE NO. PERA-C-18-236-E
 v. :
 :
TROY AREA SCHOOL DISTRICT :
 :

PROPOSED DECISION AND ORDER

On September 12, 2018, the Troy Area Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Troy Area School District (District or Employer) violated Section 1201(a) (1), (3), (5) and (8) of the Public Employe Relations Act (PERA).

On September 24, 2018, the Secretary of the Board issued a complaint and notice of hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating January 11, 2019, in Troy, as the time and place of hearing, if necessary.

The hearing was held on January 11, 2019, in Troy, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed its post-hearing brief on March 28, 2019. The District filed its post-hearing brief on April 18, 2019.

The Hearing 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. 6).
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. Tammy Chimics is a teacher in the Troy Area School District. She is a member of the bargaining unit. She has taught English in the District for the past 20 years. (N.T. 9-10).
4. For the twelve years prior to the 2018-2019 school year, Chimics taught 12th grade English. (N.T. 10-11).
5. On April 12 or 13, 2017, Chimics was suspended from her position as a teacher for the District. (N.T. 16).

6. On January 31, 2018, Arbitrator Schott E. Buchheit issued an opinion and award (the Buchheit Award) in a grievance dispute between the parties. The Award states in relevant part:

Given all of the above, I will in part deny and in part sustain the Chimics grievance. Under all of the "facts and circumstances" of her situation, it was permissible for the District to suspend Chimics from April 11, 2017 until the end of the 2016-2017 school year for the violation of an important Board policy. It was, however, an abuse of the Board's discretion to extend her punishment into the 2017-2018 school year for violation she committed.

As a remedy for the sustained portion of the Chimics grievance, the **District shall promptly reinstate Chimics to her former teaching position.** It shall also make Chimics whole for all wages and benefits lost as a result of her not being returned to her teaching position at the beginning of the 2017-2018 school year.

(Association Exhibit 1, page 32) (emphasis added).

7. Chimics was reinstated by the District after the Award had been issued. Her first day back at school was February 12, 2018. She went back to her previous assignment of teaching 12th grade English. (N.T. 11).

8. On June 13, 2018, Chimics had a meeting with Allison Polly, the schools principal, and Mr. Brenner, the assistant principal. At this meeting, Polly told Chimics that Chimics was being moved to 10th grade English. Polly explained that she was moving Chimics because she wanted more writing in 12th grade English. (N.T. 15-17).

9. Polly was hired as the principal of the District's high school in the summer of 2017 and started in the beginning of the 2017-2018 school year. (N.T. 40-41).

10. In the beginning of the 2017-2018 school year, Elizabeth Ward, who taught 9th grade English, had approached Polly and stated that she was interested in transferring to 12th grade English. Polly at that time had told Ward that she would consider it. Ward asked Polly about transferring again in January 2018. (N.T. 42-43).

11. Polly made the decision to transfer Elizabeth Ward to 12th grade English and move Chimics to 10th grade English. Polly discussed moving Chimics with Brenner starting in May 2018. Polly moved Chimics from 12th grade English and assigned Elizabeth Ward because Polly wanted a teacher who made writing a more integral part of the curriculum in 12th grade English. Based on her interactions and informal observations of Ward, Polly was generally impressed with Ward's ability as a teacher. Polly did not discuss Chimics with anyone on the School Board. (N.T. 33, 42-50, 55).

12. Polly did not know about the Buchheit Award when she made the decision to assign Chimics to 10th grade English. (N.T. 54).

DISCUSSION

The Association alleges that the District violated Section 1201 (a) (1), (3), (5) and (8) when Polly assigned Chimics to teach 10th grade English for the 2018-2019 school year.

Turning first to the Association's charge under Section 1201(a) (5) and (8), the Board has held that a public employer violates Section 1201(a) (8) when the complainant proves that the public employer refused to comply with a binding arbitration award. The Board has held that when the complainant in an unfair labor practice action charges a refusal to comply with the provisions of a binding arbitration award, the Board must determine first if an award exists, second, if the award has been stayed by an appeal, and third, if the respondent has failed to comply with the provisions of the arbitrator's decision. FOP Lodge 5 v. Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand, 2001). Where the Board has determined that an award exists, and an appeal of the award does not stay the enforcement, and the charged party has failed to comply with the provisions of the award, then the Board will find that the charged party committed an unfair practice under Section 1201(a) (8) of PERA.

In this matter, while it is clear that the Buchheit Award exists and is not stayed by appeal, the record does not support a conclusion that the District failed to comply with the terms of the Award. The relevant part of the Award's remedy with respect to Chimics states "the District shall promptly reinstate Chimics to her former teaching position." The District did this. The record shows that Chimics was returned to her position as in the District's high school within two weeks of the date of the Award. While it is true that Polly changed Chimics assignment from 12th grade English to 10th grade English for the next school year, nothing in this record indicates that the District lacked the authority to make such an assignment and, crucially, the assignment occurred after the District had complied with the terms of the Award. See North Hills School District, 38 PPER 78 (Final Order 2007) (holding that a District must first comply with an arbitration award which reinstates a teacher before it can reassign the teacher to another grade). Therefore, the District has complied with the Award and the District's claim pursuant to Section 1201(a) (5) and (8) is dismissed.

The Association also argues that the assignment of Chimics to 10th grade English was a violation of Section 1201(a) (3). In a Section 1201(a) (3) discrimination claim, the complainant has the burden of establishing "by a preponderance of the evidence, that: (1) the employee was engaged in protected activity; (2) the employer knew of the activity; and (3) the employer was motivated by an unlawful motive or anti-union animus in taking adverse action against the employee." Lancaster County. v. Pennsylvania Labor Relations Bd., 633 Pa. 294, 322 (2015). If a complainant establishes a prima facie case, "the burden then shifts to the employer to establish, by a preponderance of the evidence, that the employee would have been discharged even in the absence of ... union activities." Lehigh Area Sch. Dist. v. Pa. Labor Relations Bd., 682 A.2d 439, 443 (Pa. Cmwlth. 1996).

In this matter, while it is uncontested that Chimics engaged in protected activity known by the District, the Association's claim fails because the record nevertheless does not support a charge against the District. First, there was no adverse employment action against Chimics. Chimics was reassigned, which is squarely within the managerial rights of the District. More importantly, the record in this matter does not support any inference or conclusion that the assignment was done as punishment or for discipline or that Chimics suffered any negative consequences as a result of the reassignment. Second, the record supports a conclusion that the decision to reassign Chimics was done for reasons not related to anti-union animus. Indeed, the record clearly shows that the assignment of Chimics to 10th grade was, as the District argues, "an unavoidable outcome of moving the 10th grade teacher, Ms. Ward, to 12th grade". (District's Brief at 5).

In its Brief, the Association argues that a finding of anti-union animus can be inferred since the assignment of Chimics to 10th grade was based on pretextual reasons. The Association argues that the transfer of Chimics "without observation or appropriate explanation leads to a finding that the explanation offered was pretextual. It would be one thing if [Polly] were able to testify that she observed both Ms. Ward and Ms. Chimics and found differences in their teaching or performance that would justify such a change, but such is not the case." (Association's Brief at 16-17). The Association is correct that Polly did not formally observe Chimics before the reassignment. However, based on the record as a whole and including her demeanor on the stand, I found the following direct testimony by Polly to be notably credible and dispositive:

Q. Why did you make the decision to move Ms. Ward to 12th grade English?

A. As I told Dr. Martell with - I didn't get all observations done last year. I was not - I did not complete observation in the English department based on timing. I had multiple interactions with Ms. Ward partially because she had worked the entire time I was there. I did not have as many interactions with Ms. Chimics because she returned in February.

Ms. Ward is a leader in the English department. She offers help to wherever it's needed. Her classroom is set up as - and this is not a deficiency. It's just - I had no problem with what Ms. Chimics was doing or her room arrangement. Ms. Ward's room is set up as [a] reading room. It's a rich environment. The kids report that they really feel that she values their opinion. That she helps them improve their writing.

. . . .
She does - she works very hard to make sure that we're moving forward in the English department. And this is unofficial. She does this on her own. She's worked very hard to align out 9th and 10th grade courses to make sure that the kids are Keystone ready. We have very little remediation in the English department. Based on her interest, also I felt it was a good fit.

(N.T. 45-46). The reasoning explained above by Polly as to why she assigned Ward to 12th grade English (and necessarily and reciprocally assigned Chimics to 10th grade English) does not support a conclusion of pretext and does not otherwise support a finding of explicit anti-union animus. Therefore, as this record does not support a charge of discrimination, the Association's charge under Section 1201(a)(3) is dismissed.

The Association also alleges an independent violation of Section 1201(a)(1). 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, 36 PPER 135 (Proposed Decision and Order, 2005) (citing Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 1201(a)(1). Northwestern School District, supra. 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. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010) (citing Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

In this matter, there is no independent Section 1201(a)(1) violation as I find a reasonable employe would not have been coerced by the District's actions with respect to Chimics because the District did comply with the Award and the transfer of Chimics to 10th grade English was not an adverse employment action. If any interference with employe rights exists on this record, it would be heavily outweighed by the legitimate reasons for the assignment of Chimics to 10th grade English as explained by Polly and discussed above.

CONCLUSIONS

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

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 not committed unfair practices in violation of Section 1201(a)(1), (3), (5) and (8) of PERA.

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 rescinded.

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 at Harrisburg, Pennsylvania, this second day of July, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner