

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 776 :
 :
 :
 v. : CASE NO. PERA-C-19-218-E
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 CENTRAL DAUPHIN SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On October 9, 2019, the Teamsters Local Union No. 776 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Central Dauphin School District (District) violated Section 1201(a) (1), (3) and (5) of the Public Employee Relations Act (Act or PERA). The Union specifically alleged that the District had a contract with Durham School Services (Durham), whose drivers are represented by the Union, and entered into a contract with Krise Transportation (Krise), whose drivers are not represented by a union. The Union further alleged that the District contracted with and diverted bus routes to Krise without bargaining for discriminatory reasons which had the effect of discouraging membership in the Union by assigning work to a non-union bus company.

On November 15, 2019, the Secretary of the Board issued a letter stating that no complaint would be issued on the Union's charge. The Secretary of the Board specifically reasoned that the District does not have a bargaining obligation to the Union representing employees of Durham, a private employer, over the decision to enter into a subcontract with another private employer. The Secretary of the Board further concluded that transferring work from one subcontractor to another is not a removal of public sector employees' bargaining unit work under the Act. Even assuming a joint employer relationship, the Secretary of the Board also reasoned that where one of the employers is not subject to the Board's jurisdiction, the Board does not certify a bargaining unit and there is no enforceable statutory obligation to collectively bargain for such employees under the Act. The Secretary of the Board additionally concluded that the charge failed to allege that employees of a public employer engaged in activity protected under the Act, of which the District was aware and for which the District retaliated. Finally, the Secretary of the Board concluded that the charge failed to allege sufficient facts that would constitute an independent violation of Section 1201(a) (1) of the Act.

On December 2, 2019, the Union filed exceptions to the decision of the Secretary of the Board to dismiss the charge. By letter dated December 3, 2019, the Secretary of the Board indicated that he had approved the Union's request for an extension of time to file a brief in support of exceptions and designated a due date of January 2, 2020. On December 31, 2019, the Union filed its brief in support of exceptions with a series of attachments. On January 13, 2020, the District filed its response in opposition to the Union's exceptions.

On January 21, 2020, the Board issued an Order Directing Remand to the Secretary for Further Proceedings. On March 3, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of

April 20, 2020, in Harrisburg. At the direction of the Board, I continued the hearing due to the Commonwealth COVID closures and rescheduled the hearing for September 23, 2019, in Harrisburg. During the hearing on that date, which took place at the school board meeting room in the administrative offices of the District, both parties were afforded a full and fair opportunity to present testimony and documents and to cross examine witnesses. At the close of the Union's case at the hearing, the District moved for the dismissal of the Union's charge, which I granted. Accordingly, there was no need for post-hearing briefs.

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. 16-17)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 16-17)
3. The National Labor Relations Board (NLRB) certified the Union as the exclusive bargaining representative of the employes of Durham School Services on June 24, 2013. Durham is a private employer over which the NLRB has taken jurisdiction. (District Exhibit 1)
4. The Durham employes are not public employes within the meaning of Section 301(2) of PERA. (District Exhibit 1)
5. The District entered a contract for bus services with Durham (District-Durham Contract) effective August 1, 2015, through June 30, 2020. (District Exhibit 2, Tab 1)
6. Maryanne Mouery was employed by Durham as an office administrator and, for the last year of her employment before the COVID closures, she was a dispatcher. Ms. Mouery had an office in the front of the bus garage. (N.T. 30-31, 62)
7. Bill Yohn, at all times relevant hereto, was the General Manager at Durham. James Omslaer is the Director of Transportation for the District. Mr. Omslaer has an office in the District and one in the back of the bus garage, about 12 feet from Ms. Mouery's. Chester Fisher was hired by Durham in late 2017 or early 2018. Mr. Fisher was the Safety Supervisor employed by Durham who reported to Mr. Yohn. At about that time, Durham gave the responsibility of hiring new drivers to Mr. Fisher. (N.T. 40, 62, 255-256)
8. Mr. Fisher's office was near the entrance to the bus garage. Ms. Mouery could hear Mr. Omslaer talking to Mr. Fisher in his office. Ms. Mouery also heard Mr. Omslaer communicating on the two-way radios. (N.T. 32-34, 40, 52-53, 61-63)
9. Mr. Omslaer spent various amounts of time in his office at the bus garage. Sometimes he spent a few minutes, other times a few hours or all day. (N.T. 63-65)
10. The District was not involved with interviewing or hiring Durham drivers. Ms. Mouery initiated FBI background checks for new bus driver

applicants. She also sent them for drug and alcohol testing and conducted the initial interviews of the applicants, after which she prepared a folder for each new applicant. Under state law, school bus drivers are required to have certain clearances before they can be permitted to work around children. (N.T. 32-34, 118-119)

11. Ms. Mouery showed the folders to Mr. Yohn to ensure that the information in the folders was compiled properly. With Mr. Yohn's approval, Ms. Mouery then gave the folder to Mr. Omslaer. (N.T. 32-34)

12. Durham could not access the results of the FBI background check. Only Mr. Omslaer had privileges to view the results of the FBI background checks. When reviewing a Durham driver applicant's folder, Mr. Omslaer was only checking for the appropriate criminal background clearances, driving credentials, clean driving record and whether under state law, a driver could be on school property working with students. If the District did not approve of a driver, Durham could and did assign the driver to a non-District bus assignment. The District did not care who Durham hired as long as drivers exposed to District students were qualified and passed background checks. (N.T. 34-36, 120-123, 275)

13. The Office of the Auditor General for the Commonwealth audits the District's transportation records to ensure that all drivers have proper clearances. (N.T. 277-278)

14. Durham's hiring practices are consistent with the requirements of the District-Durham Contract. Paragraph 9 of that Contract provides as follows:

Contractor [Durham] shall employ bus drivers subject to Customer's [District's] approval who meet all standards and qualifications of the Pennsylvania Bureau of Traffic Safety. Each driver shall submit to and pass periodic physical examination as required by the Pennsylvania Department of Transportation and the Pennsylvania School Code.

Each driver employed by and provided by the Contractor [Durham] shall be compliant with any and all federal, state, and Pennsylvania Department of Education requirements, including but not limited to Act 34, Act 151, Act 126, Act 24 and the Criminal History Records Information Act. Contractor [Durham] shall provide Customer [District] with proof of all required clearances, including but not limited to Act 34 and Act 151 clearances, for each driver before the driver shall be permitted to transport students.

(District Exhibit 2, Tab 1)

15. The District has no role in disciplining Durham drivers, but it has the right to prohibit a Durham driver from driving District students after a disqualifying incident. Mr. Omslaer has not told Durham to terminate the employment of a driver and he has no authority to do so; he has required Durham to ensure that certain drivers do not drive District students. Durham could and did reassign drivers to non-District work after disqualifying incidents with District students. For the past 9 years, Durham had the responsibility to find a driver to cover a route for a driver who was no longer permitted to drive District students. The District could not force and

has not forced Durham to terminate any of its drivers. (N.T. 114, 123-124, 129, 278, 285, 289-295)

16. In 2018, Mr. Omslaer wanted a driver removed from his route because he got into an accident in icy conditions, during which a student was ejected from the bus, and Durham reassigned the driver to non-District driving. (N.T. 176)

17. Vacation, sick leave, and health care benefits are provided, maintained and tracked by Durham. The District has no input regarding drivers' vacation or sick leave benefits or usage. When drivers called off sick, they called Durham, not the District. (N.T. 124, 154, 197)

18. Durham drivers were paid by Durham and not the District. Bus drivers employed at Durham swiped into a computer system for time and payroll purposes. Ms. Mouery checked the time entries, finalized the payroll, and forwarded the information to Durham's Corporate Headquarters in Illinois. Nothing involving payroll was ever sent to the District, and neither Durham nor Krise drivers were on the District's payroll. (N.T. 42-43, 118-119, 126-127, 154, 197, 277)

19. Durham prepared invoices for the bus runs for a given month and sent them to Mr. Omslaer at the District, consistent with Paragraph 11 of the District-Durham Contract. The District paid Durham for bus runs and not wages. (N.T. 43-44: District Exhibit 2, Tab 1)

20. Paragraph 6 of the District-Durham contract provides that Durham "is an independent contractor, and not an officer, agent or employee of the [District]." It further provides that Durham "shall be solely responsible for payment of its employees' wages and benefits." (District Exhibit 2, Tab 1)

21. Any and all grievances filed by the Durham drivers were filed with Durham under the collective bargaining agreement (CBA) between Durham and the Union. Grievances have never been filed with the District, and the District does not get involved in any grievance disputes. The District is not a party to the CBA between Durham and the Union, and all driver benefits are governed by that CBA. Mr. Omslaer refused to respond to grievances if asked. (N. 124-125, 155, 280, 303-304, 307, 324, 327-328)

22. There were multiple employees of Durham, who reported to Mr. Yohn, Durham's General Manager, who provided training and testing for new Durham drivers. No District employees were involved in training Durham drivers. (N.T. 37-38, 124-125)

23. Durham assigned the drivers to buses and bus routes. The routes are developed and created by the District. The District then assigned a bus number to the driver after Durham assigns them to their routes. (N.T. 38, 44-46, 124-125)

24. The District thereafter provided a new route sheet to Durham reflecting the bus assignments made by Durham. Durham then gave a copy of the route sheet to the new driver. (N.T. 39)

25. The District's development of bus routes is consistent with Paragraph 8 of the District-Durham Contract. (District Exhibit 2, Tab 1)

26. Paragraph 22 of the District-Durham Contract provides that "[t]he Customer [District] shall not waive the right to contract with parents, guardians, and other contractors for the transportation of any pupils." (District Exhibit 2, Tab 1 at Paragraph 22)

27. The District-Durham Contract Default Clause provides, in relevant part, as follows:

[S]hould the Contractor [Durham] fail to provide continuous and consistent busing services as required under this Agreement in part as it relates to certain routes, the Customer [District] has the right to hire a third party to provide said services and charge the Contractor [Durham] with any expense associated with the third party's performance beyond what would have been paid to the Contractor [Durham].

(District Exhibit 2, Tab 1 at Paragraph 36)

28. Under Paragraphs 22 and 36 of the District-Durham Contract, the District was authorized to give routes to another bus company, and there was no guaranteed minimum number of routes for Durham. For at least ten years, the District received bus services from Durham and Boyo. And, as of August 2019, the District received bus services from Boyo, Durham and Krise. (N.T. 110, 155-157, 279)

29. In March 2018, Ms. Mouery overheard Mr. Omslaer state that "he doesn't like the Union because they always work hard for people we want to get rid of." During the 2018-2019 school year, before Krise began providing bus services for the District, Karen Peyton, a Durham Dispatcher, openly complained about Durham's shortage of drivers, that drivers could take off whenever they wanted and that the drivers can get away with anything when they file grievances, to which Mr. Omslaer stated that "the Union wasn't worth its trouble." (N.T. 90-91, 146, 164)

30. Aaron McConnell is the Assistant Superintendent of Finance and Administrative Operations for the District. Mr. McConnell has never been involved in the hiring of Durham bus drivers nor did he discuss the hiring of bus drivers with Mr. Omslaer. (N.T. 245-246, 255-256; District Exhibit 2, Tab 3)

31. In 2018, the District issued a Request for Pricing for transportation services to relieve the pressure on Durham and take over bus routes. The District rejected all the responses including one from Krise. (N.T. 246-247)

32. On February 27, 2019, Mr. McConnell, issued a breach-of-contract letter to Durham. The letter provides, in relevant part, as follows:

On February 25, 2019, Durham had at least 5 routes that were not covered by an assigned driver and bus. And, on February 26, 2019, Durham had at least 3 routes that were not covered by an assigned driver and bus. This means that over the last two days alone, Durham has failed to provide the required transportation services to the District's students on at least 8 routes. Durham's failure to perform these transportation services is a breach of the Agreement and is entirely unacceptable.

Moreover, on February 25 and 26, Durham covered routes with staff members who, because they were driving school buses, could not perform their own job duties. For example, we understand that Durham's general manager, safety supervisor, and AM dispatcher drove routes on both February 25 and 26. Because these individuals were covering routes, they could not appropriately address safety issues and dispatch issues, or perform other typical functions of their job duties.

While Durham's recent failures to provide required transportation services are its most recent breaches of its contractual duties, those failures certainly are not the only times that Durham has breached its obligations. By way of example, on January 31, 2019, Durham had at least 38 school buses that were nonoperational and at least four drivers who called off, which resulted in Durham informing the District that Durham could not perform its contractual duty of providing busing services to the District's students. Because Durham could not transport the students to/from their schools, the District was forced to close for the entire day.

Durham's breaches of its contractual duty to provide consistent and continuous busing services have a substantial impact on the District and the Community and are simply not acceptable. Apparently recognizing the significant impact that its failures to perform have on the District and the Community, we understand that on February 25, 2019, Durham directly contacted the parents of students requesting that the parents themselves transport their children to school. This too is entirely unacceptable and should not be repeated.

(N.T. 266; District Exhibit 2, Tab 3).

33. January 31, 2019 was a very cold day, and Durham had not brought in its startup crew on time. The startup crew is supposed to begin working at 4:00 a.m. to start and warm up the buses in time for the morning bus runs. 38 buses would not start that day and a number of drivers called off. Even if the buses had started, Mr. Yohn told Mr. McConnell that it did not have enough drivers to cover the runs, and the District was forced to close. The District's Superintendent became angry with Mr. McConnell as a result of the incident. (N.T. 267, 284)

34. On May 17, 2019, Mr. McConnell sent another letter to Durham outlining Durham's breach of performance under the District-Durham Contract. The letter stated, in relevant part, as follows:

Unfortunately, Durham has not corrected its deficient performance of the Agreement. Durham continues to fail to cover the bus routes needed to transport students—Durham's failure to perform not only violates the Agreement but also creates safety risks for the students of the District. . . . Mr. Yohn has admitted that Durham currently has so few qualified drivers that its number of drivers is at the worst level ever. Mr. Yohn further admitted that the individuals who are seeking employment as drivers do not meet the standards for the position. Durham must correct these staffing and equipment deficiencies in order to provide the busing services that the District needs and the Agreement requires.

Additionally, the District has recently learned that Durham has breached the Agreement by using individuals to drive buses who have not been cleared to perform that position [on multiple occasions placing students at risk].

Durham's failure to comply with its contractual obligations is worthy of termination of the Agreement. . . .

Finally, Durham is hereby advised that the District may act upon its contractual right to hire a third party to provide transportation services and may charge Durham with any expense associated with the third party's performance beyond what would have been paid to Durham.

District Exhibit 2, Tab 4)

35. At the end of the 2018-2019 school year, Mr. Omslaer and Mr. McConnell discussed Durham's failure to perform under the District-Durham Contract, and Mr. Omslaer expressed concerns over Durham's ability to cover bus runs. At this time, Mr. McConnell already knew from school board members and public complaints about the problems with Durham. Mr. McConnell and Mr. Omslaer had the responsibility of ensuring that the District could have school which depended on having enough drivers to get all the students to school. Durham did not have enough drivers. (N.T. 258, 282-284)

36. The school board public meeting minutes for May 20, 2019, reflect that the District authorized the administration to negotiate a transportation contract with Krise for at least 30 bus routes beginning in the 2019-2020 school year. At the school board meetings in early 2019, the Union learned that the District was transferring bus routes to Krise. Also, Sean Taylor, Union Business Agent, was aware of the Krise contract at the end of May 2019. (N.T. 236, 246-247; District Exhibit 2, Tab 8 §8.06)

37. Throughout the 2018-2019 school year, Durham had ongoing problems getting drivers and keeping them. Durham did not have enough drivers to cover the District's bus routes. In the Spring of 2019, Durham's complement of drivers was at the lowest levels since it began its relationship with the District. (N.T. 112, 115-116)

38. On or about May 28, 2019, the District executed a transportation contract with Krise, and the school board meeting minutes from the same date reflect that the school board approved the Krise contract. Union Steward Roxanne Ebersole was present for the May 20, 2019 school board meeting, authorizing negotiations with Krise, and the May 28, 2019 school board meeting approving the contract with Krise. The effective date of the Krise contract was August 1, 2019. (N.T. 79-80; District Exhibit 2, Tabs 2 & 9)

39. At the end of the 2018-2019 school year, around May or June 2019, Mr. Fisher left Durham and began working for Krise. There is no evidence that the District or Mr. Omslaer wanted or directed Mr. Fisher to obtain employment with Krise. Mr. Fisher's employment with Krise was not part of Mr. McConnell's negotiations with Krise. (N.T. 41, 81, 180-182, 208-210, 276)¹

¹ There was testimony from Ms. Mouery that she overheard a conversation between Mr. Omslaer and Mr. Fisher, while sitting at her dispatch desk at the

40. At two different school board meetings in early 2019, Tim Krise, the Owner of Krise, stated that he would take all the Durham drivers and preserve their seniority. Bill Smith was a Union steward at Durham for a brief period. He applied for a position at Krise in August 2019 and interviewed with Mr. Fisher in January 2020. He was not hired by Krise. Mr. Smith has no evidence that the District or Mr. Omslaer were involved in the decision not to hire him at Krise. (N.T. 187-191, 195-196, 202-203, 213)

41. Until the 2019-2020 school year, bus routes remained mostly the same, and they were modified by the District to accommodate new students. It is important to the District that Bus drivers were assigned the same routes every year due to student and parent familiarity. Driver familiarity and timely transportation was compromised when Durham split routes or had other drivers cover routes. Parents complained. (N.T. 48-49, 265-266)

42. The District's administrators' discussions in 2018, to seek help for Durham, were necessitated by Durham's repeated contract violations and performance deficiencies. These deficiencies included: late arrivals and departures, failure to pick up students, Durham calling parents to take their own children to school for lack of drivers, Durham's missing sports runs, and the District-wide shut down due to lack of drivers in January 2019. The District received many phone calls from parents complaining about bus service for their children. The school board was under a lot of pressure. The school board members asked Mr. McConnell to do something and they characterized Durham as "terrible." Pressure from the school board and the public on Mr. McConnell motivated him to begin shopping for other transportation vendors. (N.T. 260-265, 281)

43. On August 26, 2019, Robert Scarpa, Eastern Pennsylvania Regional Manager for Durham, emailed Mr. Omslaer asking whether Boyo or Krise could take over three bus routes that were open because Durham had no drivers for those runs. Thereafter, Durham did not object when the District reduced the number of Durham bus runs during the 2019-20 school year. (N.T. 269; District Exhibit 4)

44. In August and September 2019, at the beginning of the 2019-2020 school year, the District gave approximately 4 bus routes to Krise. As the school year progressed, the District gave more bus runs to Krise, as more drivers called off from work. (N.T. 65-71)

45. On September 16, 2019, Mr. McConnell wrote another letter to Durham requesting that Durham immediately remedy the deficient transportation services, stating that the District has repeatedly reached out to Durham to

Durham garage. (N.T. 77-92). I admitted the hearsay statements of Mr. Omslaer because he was a managerial director for the District, but I excluded the hearsay statements of Mr. Fisher who was a managerial employe of Krise at the time and not a party to this case. Ms. Mouery testified that she overheard the statements in late October and the beginning of November 2019, but Mr. Fisher began working for Krise in May or June of 2019. Ms. Mouery did not explain why Mr. Fisher, who had management duties at Krise, would have been at the Durham garage during the workday, when he had not worked at Durham for 4-5 months. As a result, I do not credit the testimony about the alleged statements, for which there is insufficient foundation to deem the evidence veritable. The Union could have subpoenaed Mr. Omslaer and/or Mr. Fisher.

correct its performance issues. In this context, Mr. McConnell noted that inadequate staffing levels must be corrected and that Durham is supposed to have at least 98 drivers but only has 84. The driver shortage is resulting in significant disruption to the District. On September 9, 2019, Durham again did not appropriately cover five routes which resulted in numerous students being transported to school beyond the start of their school day. The letter also emphasized that Durham must correct the staffing of its mechanics because then-current staffing levels prevented Durham from making timely repairs to its vehicles as required by the parties' Agreement. Also, Durham had rotated between three different managers in the month since the start of the school year, creating a lack of consistency and performance. Durham's dispatch office had not answered calls from the District or the public, leaving unanswered questions from administrators and parents regarding lost students. Finally, Mr. McConnell noted that 32 surveillance cameras were not functioning properly leaving one third of the buses without functioning cameras since the start of the 2019-2020 school year. Durham was contractually obligated to maintain video records of its bus runs. (N.T. 128; District Exhibit 2, Tab 5)

46. At this time, with only 84 drivers to cover 98 routes, Durham started the 2019-2020 school year with significantly less drivers than were needed to cover the routes. Unless these routes were covered by Boyo or Krise, the routes were not covered unless Durham drivers drove multiple routes at different times affecting the timeliness of student arrivals and departures from school buildings in the District. (N.T. 116-117)

47. On many occasions since before 2010, when Durham drivers called off, Boyo had to provide coverage for the runs. At the beginning of the 2019-2020 school year, the District covered Durham's driver deficiency of 14 drivers by giving routes to Krise which enabled Durham to cover the remaining routes with less drivers. The contractually authorized practice of covering Durham runs with another contractor, when there was an insufficient number of Durham drivers, has been consistent for the past 10 years. (N.T. 149-150, 166-168, 236-237, 261)

48. Paragraph 19.1 of the District Durham Contract provides, in relevant part, as follows:

[T]he Contractor [Durham] shall submit to the Auditor and the School District all invoices presented for payment pursuant to this Agreement, all cancelled checks, material, work product, work papers, books, records and accounts upon which the invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by an Auditor.

(District Exhibit 2, Tab 1)

49. Paragraph 19.3 provides that "[t]he Contractor shall make available, at reasonable times during this Agreement and for the period set forth in Section 15.4 below, all records pertaining to this Agreement for the purpose of inspection, audit or reproduction by any Auditor. (District Exhibit 2, Tab 1 at Paragraph 19.3)

50. Pursuant to Paragraphs 19.1 and 19.3 of the District-Durham Contract, Mr. Omslaer would often review Durham's dispatch logs. Throughout the 2019-2020 school year, drivers began calling off leaving open runs for Durham to fill. When Mr. Omslaer reviewed the dispatch logs and saw which runs were without a driver, he moved those runs to Krise. From late August 2019 to the COVID shutdown in March 2020, approximately 28 runs were moved to Krise. (N.T. 71, 144, 157)

51. Often, Ms. Mouery has heard Mr. Omslaer over the two-way radio asking Mr. Yohn for the video from a bus that had an incident, such as a student fight on the bus. Sometimes Mr. Omslaer asked Ms. Peyton for the videos. Mr. Omslaer came to the garage to watch the videos. As a result of watching the videos at times, Mr. Omslaer directed Mr. Yohn to remove a driver from driving District students pending investigation into safety and student management issues, consistent with Paragraph 9(C) of the District-Durham contract. (N.T. 58-60, 145-148; District Exhibit 2, Tab 1)

52. As a result of watching bus videos, Mr. Omslaer removed certain drivers from doing runs at Southside Elementary because the drivers could not handle those students and it created a safety and student management problem. (N.T. 149)

53. Assistant Superintendent McConnell has never talked to Mr. Omslaer about the Union. Mr. McConnell has never met with Mr. Fisher. Mr. McConnell's entire testimony was extremely credible. His testimony was specifically credible that contracting with Krise had nothing to do with the Union or eliminating the Union. Mr. McConnell, not Mr. Omslaer, recommended to the school board to approve the Krise contract. There was never any discussion with school board members or anyone else in which reference was made to switching bus companies because of the Union. (N.T. 252-254, 261-263, 270)

54. On May 20, 2020, the Union filed a charge of unfair labor practices against Krise with the NLRB. The Union did not therein allege that the District was a joint employer with Krise. (N.T. 11-12; District Exhibit 1)

55. On June 30, 2020, the District-Durham Contract ended, and Durham stopped providing bus services for the District. (N.T. 117; District Exhibit 2, Tab 1)

DISCUSSION

At the close of the Union's case-in-Chief, the District moved for the dismissal of all claims for failure establish the timeliness of the charge, the Union's failure to establish the jurisdiction of the Board over either the alleged bargaining violations or discrimination claims, and the lack of District knowledge over any protected activity as well as the District's lack of discriminatory motive for transferring bus runs to Krise. The first issue in this case is the District's assertion that the charge is untimely because the Union knew that the District entered a subcontract with Krise on May 28, 2019, at the public school board meeting on that date and Union Business Agent Taylor knew of the contract by the end of May 2019. The District contends that the charge filed on October 9, 2019, is more than four months beyond the end of May or the beginning of June 2019. The Krise contract, however, became effective August 1, 2019, and the District did not begin transferring bus routes to Krise until August 2019, at the start of the 2019-2020 school year.

In Transportation Workers Union of America, Local 282 v. Bristol Township School District, 46 PPER 87 (Proposed Decision and Order, 2015), Hearing Examiner Thomas P. Leonard accurately surveyed Board case law in this area with facts analogous to the instant case. Examiner Leonard opined as follows:

In Harrisburg School District, *supra*. the Board held that the Association's charge of an illegal transfer of bargaining unit work in the Early Childhood Education Program to the local Head Start agency effective with the next school year was premature "because the District had not implemented its alleged decision to transfer bargaining unit work to non-bargaining unit personnel," *citing APSCUF v. PLRB*, 661 A.2d 898 (Pa. Cmwlth. 1995), *appeal denied*, 542 Pa. 649, 666 A.2d 1058 (1995)."

In APSCUF, Id., the State System of Higher Education (SSHE) adopted a policy that created a new classification of employees. The policy also stated, "[w]hen implementation of this policy involves the assumption of bargaining unit work the appropriate bargaining unit will be engaged in negotiations." *Id.* at 901. The Commonwealth Court affirmed the Board's decision that the charge was premature where "[t]he record contains no evidence that any bargaining unit work has actually been assigned to persons outside the unit," and "all that exists is an indication in the policy that the SSHE may seek to make such an assignment at some point in the future." *Id.*

In AFSCME District Council 89 v. Lancaster County, *supra*, the Board found that a Union's charge alleging a failure to comply with a prison guards' interest arbitration award filed more than four months after the County announced that it would not comply with the award was timely. The Board explained its decision.

However, in situations where, as here, the employer merely announces a future intent to engage in an unfair practice, or not comply with an award, the Board has consistently held that a charge of unfair practices is not ripe until the employer's decision actually has an effect on employe wages, hours or working conditions. (citations omitted).

43 PPER 138, at p. 507.

The District contends that the facts of the present case call for a different conclusion. The District asserts that the implementation of the decision to transfer the work, and end participation in PSERS, occurred on the date the District publicly approved and executed the STS agreement, April 16, 2012. The transfer of work decision was not implemented by the PCAs starting their employment with STS [until] August 28. In the cases cited by the Union, there was no evidence of a signed agreement with the subcontractor. Instead, the evidence either showed merely an intention to subcontract (Harrisburg School District), or a policy that would potentially be implemented (APSCUF) or an intention not to comply with an interest arbitration award (Lancaster County). The District argues that in the present case, rather than intentions and potentialities, there exists the certainty of an executed, legally binding agreement that commits the District to take action.

However, the District has cited no case that is on point with its argument that an existing contract with a subcontractor changes the timeliness analysis.

Bristol Township School District, 46 PPER 87 (emphasis added). Similarly, in the instant case, the Union was aware that the District actually entered a subcontract with Krise at the end of May 2019. However, the contract, by its own terms, was not effective until the beginning of the 2019-2020 school year, in August 2019, and the District did not transfer bus runs until that time. The acts complained of in the Union's charge involve the actual transfer of bus runs to Krise. Accordingly, the charge, which was filed on October 9, 2019, was well within the four-month statute of limitations period provided in Section 1505 of the Act.

The next issue presented is whether the Board has jurisdiction over parties and the claims. This issue has two subparts, and the analysis is different for the Union's refusal to bargain claims than it is for the Union's discrimination claims. The Union has attempted to establish that the District was a joint employer with Durham of Durham's employees. However, addressing the bargaining claims first, the Board, as a matter of law cannot exercise jurisdiction over the District's alleged refusal to bargain, even if the District were somehow a joint employer with Durham and/or Krise.

Even though the District is a public employer of public employees, the District is not, and has never been, the employer of the Durham bargaining unit employees at issue in this case. The Union has asserted throughout this litigation that the District is a joint employer with Durham. However, even if that were a proper conclusion, for purposes of the bargaining claims under the facts of this case, the joint employer status of the District with Durham does not create or establish any bargaining obligation between the District and the Union employees of Durham. The relationship between the District and Durham is not the same as a joint employer relationship between two public employers, as seen in County government, where there can be shared bargaining obligations and the division of responsibility over wages, hours and working conditions as well as hiring, terminating and directing employees.

The Durham drivers are private employees employed by a private company. The NLRB has asserted jurisdiction over these employees and Durham. The NLRB has certified the Union as Durham employees' exclusive bargaining representative. As a result, the Union and Durham are parties to a CBA. The District is not a party to that CBA, which controls the wages, hours, working conditions and benefits for the Durham employees. Indeed, this Board cannot assert jurisdiction over employees when the NLRB has asserted jurisdiction over those employees. 43 P.S. § 1101.301(1). In this regard, even if there were a joint employer relationship here, the Board will not certify a bargaining representative for employees where one employer is a public employer and the other employer is a private employer under the jurisdiction of the NLRB. In the Matter of the Employees of Southeastern Pennsylvania Transportation Authority (SEPTA), 48 PPER 59 (Final Order, 2017).

As is clearly evident from this record, the District is precluded from bargaining with the Union and, in fact, never has bargained with the Union. Indeed, the Union has not taken the position that the District is a joint employer until this litigation, and the District has not acted as such. This Board, therefore, does not recognize any collective bargaining obligation on the part of the District with the Union and the Durham employees. Although the Union may have at times attempted to discuss

grievance resolutions with the District, the District unambiguously declined to even discuss those matters with the Union because it had no obligation to do so. Grievances were filed with Durham and addressed or resolved in every case with Durham. Accordingly, there can be no bargaining violation committed by the District for refusing to bargain the subcontracting of bus runs or the transfer of bus runs from one private subcontractor (Durham) to another subcontractor (Krise). Moreover, the District-Durham Contract gives the District an unquestionable right to purchase bus services from other bus companies for any reason, which it had been doing with Boyo for over ten years. Therefore, the Union's claims under Section 1201(a) (5) are hereby dismissed.

The Union further contends that the Board has jurisdiction to remedy the Union's allegations of discrimination against the District as a joint employer pursuant to the Commonwealth Court's decision in United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Steamfitters Local 449 v. PLRB (Steamfitters), 613 A.2d 155 (Pa. Cmwlth. 1992). Significantly, Steamfitters is limited in applicability to a discrimination claim because, as stated above, the Board cannot force a public employer to bargain with a union or process grievances filed by a union representing employees of a private company doing business with the public employer. In defense, the District maintains that it never exercised the level of control over Durham employees that the University of Pittsburgh exercised in Steamfitters.

In Steamfitters, the University of Pittsburgh contracted with a private employer, called Bryan Mechanical Company (Bryan), for the repair, maintenance, and installation of HVAC equipment throughout the University's physical plant. Approximately thirteen steamfitters employed by Bryan, two of whom were foremen, worked at the University's main campus in Pittsburgh. The two Bryan foremen supervised the remaining eleven Bryan employees working on University property. However, the two foremen were directly supervised by the University's Manager of Mechanical Systems.

Bryan was a member of a Mechanical Contractors' Association (MCA) and was a signatory to the collective bargaining agreement between the MCA and the Steamfitters. That collective bargaining agreement governed hiring, grievance and arbitration procedures, work hours, holidays, overtime, pensions, shift work and subcontracting. The hearing examiner in Steamfitters found that Bryan paid the bargaining unit members and handled the required withholdings. He also found that the University did not maintain any payroll, benefit, insurance data or other documents for any Steamfitter employees of Bryan. The hearing examiner further found that the University's Director of Physical Plant Operations and Maintenance and its Manager of Mechanical Systems had been responsible for disciplining Bryan employees involved in various incidents of misconduct. The Steamfitters filed a charge with the Board alleging that the University unlawfully discharged two Bryan employees at the University for discriminatory reasons. The decision was made by the University's Director of Physical Plant Operations and Maintenance, after consultation with its Manager of Mechanical Systems, without involvement by Bryan representatives.

On those facts, the examiner dismissed the claims and the Board affirmed. The examiner concluded that the University and Bryan were joint employers of the Steamfitters at the University and held that where one joint employer falls outside the Act, as Bryan had, the Board cannot exercise jurisdiction.

The Commonwealth Court, in Steamfitters, agreed with the hearing examiner and the Board that there existed a joint employer relationship between Bryan and the University based on the Pennsylvania Supreme Court's decisions in Costigan v. Philadelphia Finance Department Employees Local 696, 462 Pa. 425, 341 A.2d 456 (1975), and Sweet v. Pennsylvania Labor Relations Board, 457 Pa. 456, 322 A.2d 362 (1974). In Sweet, our Supreme Court stated:

The relation of employer and employe exists when a party has the right to select the employe, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done.... The duty to pay an employe's salary is often coincident with the status of employer, but not solely determinative of that status.

Sweet, 457 Pa. at 462, 322 A.2d at 365 (citations omitted). The Steamfitters Court also relied on Costigan and observed as follows:

[T]he Register of Wills for the City of Philadelphia was found to have the exclusive power to hire, fire, promote, and direct the work of the employees. The City of Philadelphia, on the other hand, paid most of the employee salaries and other compensation costs of the office and exercised considerable control over the fringe benefits. Thus, both were deemed employers for purposes of the Act. In the present [Steamfitters] case, the parties do not dispute that the University exercises considerable control over the hiring, firing, and direction of the employees in question, a situation analogous to that of the Register of Wills in Costigan. As with the City of Philadelphia in Costigan, Bryan actually pays the employees' salaries and other compensation costs and, by agreeing to the collective bargaining agreement between MCA and Local 449 [Steamfitters], has some control over the fringe benefits accorded the employees.

Steamfitters, 613 A.2d 155 (Pa. Cmwlth. 1992). Indeed, the Court emphasized that "when steamfitters were subject to discipline, the University decided on the severity of discipline to be imposed and reserved exclusive authority to modify that discipline without any involvement by Bryan representatives." The Steamfitters Court then concluded that "the hearing examiner and the Board properly applied the standards set forth in Sweet and Costigan in finding a joint employer relationship.

However, the Steamfitters Court disagreed with the Board's conclusion that it lacked subject matter jurisdiction over the discrimination claims relying on the considerable control the public employer University exercised over the Bryan employes and the ability for the Board to effectuate a remedy for discrimination against the public University. In this regard, the Commonwealth Court, in Steamfitters, stated the following:

Even though Bryan may be considered a joint employer, it is only marginally so where it is undisputed that the University exercises considerable control over the hiring, firing, and direction of the employees. Under these facts, a remedial order directed only against the University could remedy any potential violation based on the underlying charge.

Steamfitters, 613 A.2d at 158. In remanding the case back to the Board to determine whether there was discrimination, the Steamfitters Court opined as follows:

[T]he University actually controls the hiring of the steamfitters, despite the hearing examiner's conclusion This leads to the conclusion that the Board could direct the University to re-employ [the two Steamfitters] without affecting Bryan's interests. . . . Furthermore, assuming that the two employees prevail in their charge of unlawful discharge before the Board, the Board could appropriately direct that the University provide for the back pay and restoration of benefits of the two employees inasmuch as the University already pays for steamfitter salaries.

Id. At 158.

The District in this case, however, has not exercised the level of control over Durham employees as required by Steamfitters, Sweet and Costigan for a joint-employer relationship between the District and Durham. Where the public employer University in Steamfitters exercised "considerable control over the hiring, firing, and direction of employees" the District in this case has no such control. Additionally, in Steamfitters, the Court also emphasized that "the University already pays for the steamfitter salaries." In this manner, the Court concluded that the public employer could restore employment and benefits and provide for backpay should there be a finding of discrimination.

The record shows that the District did not select or hire Durham employees; it did not pay Durham employee salaries, rather it paid for bus runs; it did not provide or pay benefits to Durham employees; it did not track or maintain benefits for Durham employees; it did not impose discipline on Durham employees; it did not terminate Durham employees. Consequently, the District cannot effectuate a remedy, if ordered to do so.

The Durham drivers were trained by Durham personnel and reported to Mr. Yohn and Mr. Fisher, both Durham management employees, until Mr. Fisher left for Krise. Durham interviewed all driver applicants, trained them, sent them for drug testing and initiated the criminal background checks. Mr. Omslaer merely ensured that the background check was passed and the proper driving qualifications were met before the driver was exposed to students, as is required by law. Mr. Omslaer was the only one in a position to review the FBI check, not Durham. That review had to be done by him and not Durham.

The Durham drivers did not report to Mr. Omslaer. The fact that Mr. Omslaer reviewed bus video, triggered by parent complaints or radio communications, to investigate drivers' competence to manage students or their handling of other bus and traffic incidents, demonstrates his and the District's oversight responsibility over the safe transportation of school children and not his managerial control over the drivers. State law and concerns over liability require the District to exclude drivers who fail background checks, compromise the safety of students or lose their driving credentials. An obligation posed by law to oversee the safety of students and exclude certain drivers for those reasons does not rise to the level of managerial control demonstrative of a joint employer. And, it does not make the District a partner with Durham. Unless there was cause for excluding a driver from exposure to District students, the District was not involved with job assignments or direction of Durham personnel. To make this case analogous

to Steamfitters, Mr. Omslaer would have to be involved in selecting and hiring Durham drivers; Durham drivers would report to and receive assignments from Mr. Omslaer; and Mr. Omslaer would mete out discipline for Durham drivers, all of which is not the case.

Mr. Omslaer had an office in the bus garage. As the customer of bus services, it was his prerogative to witness operations. He was also entitled, under the District-Durham Contract, to audit Durham's dispatch logs and other documents in preparation for state audits conducted by the State Auditor General and to ensure that the District was receiving adequate customer service.

The District has never disciplined or terminated a Durham driver. When a driver's conduct or loss of his/her driving qualifications required the removal of the driver from exposure to District students, Durham transferred the driver to a non-District bus run or service. Also, the record is clear that all grievances filed by Durham drivers were filed with Durham under the CBA that Durham has with the Union. When Union officials on occasion sought to involve Mr. Omslaer in resolving certain grievances, he refused to become involved evidencing his separation from labor-management relations within Durham and the lack of managerial control by him or the District over those employees. Durham, not the District, approved or denied vacation leave and sick leave. Durham, not the District, maintained leave records for Durham drivers. Additionally, payroll and payroll records were maintained by Durham and not the District.

The record also lacks any evidence regarding District control over Krise or joint managerial control over Durham employees. The Union did not allege in its unfair labor practice charge against Krise, which it filed with the NLRB, that there was a joint employer relationship between Krise and the District. Also, there is no evidence in this record that the District in any way controlled Mr. Fisher or had any involvement with his transfer to Krise. Accordingly, the Board lacks jurisdiction over the parties and the claims involved in this case.

Additionally, the Union did not establish a prima facie discrimination claim with substantial, competent evidence. To establish a claim for discrimination, the Union had the burden of establishing that the District knew that employees were engaged in protected activity and that it took adverse employment action against employees because of or in retaliation for those activities. 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).

The Union offered the statements of Mr. Omslaer that tended to show his frustration with its Unionized vendor. In March 2018, Ms. Mouery overheard Mr. Omslaer state that "he doesn't like the Union because they always work hard for people we want to get rid of." During the 2018-2019 school year, before the Krise contract, Karen Peyton, a Durham Dispatcher, herself openly complained about Durham's shortage of drivers, that drivers could take off whenever they wanted and that the drivers can get away with anything when they file grievances, to which Mr. Omslaer stated that "the Union wasn't

worth its trouble." These are the only statements that I have credited as having been made by Mr. Omslaer.

Mr. Omslaer's statements do evidence his frustration with the Union and its membership for, in his view, facilitating job security for poorly performing employes. By responding to Ms. Peyton's comments, he seemingly shared her frustration with the filing of grievances, which in her view allowed employes to "get away with anything." Although membership in an employe organization is alone insufficient to establish protected activities cognizable under the Act, Micki Fink v. Clarion County, 32 PPER 32165 (Final Order, 2001) (requiring affirmative action on behalf of a union or its members), when the Union "work[ed] for people that [Mr. Omslaer] want[ed] to get rid of," the Union was engaged in affirmative, protected activity on behalf of employes. However, Mr. Omslaer's statements, while exhibiting Union animus, do not yield the inference of retaliatory intent regarding his support for changing contractors. There simply is no nexus between Mr. Omslaer's frame of mind and the District's decision (made by Mr. McConnell and the school board, and not Mr. Omslaer) to change bus contractors. Moreover, the affirmative activities on behalf of Durham employes would not qualify for protection under PERA because the employes are not public employes under PERA, without the requisite joint employer relationship with a public employer, within the meaning of Steamfitters. Absent protected activity and retaliatory motive for subcontracting, the Union's discrimination claim fails as a matter of law.

Furthermore, the uncontradicted and credible reasons of record that proximately caused the District to change vendors from Durham to Krise was Durham's failure to perform its transportation obligations for the District over a long period of time on many occasions. Mr. McConnell, the Assistant Superintendent of Finance and Operations for the District, who was never involved in the Union or employment issues of Durham drivers, credibly testified to myriad problems the District was having with Durham.

In 2018, the District issued a Request for Pricing for transportation services to relieve the pressure on Durham which was having trouble fulfilling its transportation obligations for approximately 98 of the 150 or 160 bus routes. In February 2019, Mr. McConnell issued a breach of contract letter to Durham memorializing Durham's delinquent performance. As stated in that letter, on January 31, 2019, Durham had at least 38 school buses that were nonoperational and at least four drivers who called off, which resulted in Durham informing the District that Durham could not perform its contractual duty of providing busing services to the District's students. The District's Superintendent became angry with Mr. McConnell as a result of the incident. Because Durham could not transport the students, the District was forced to close for the entire day. Also, Durham had at least 5 routes that were not covered on February 25, 2019, and at least 3 routes that were not covered on February 26, 2019. As a result, Durham used management personnel to cover routes who therefore could not address safety and dispatch issues. Also as a result, Durham personnel contacted parents requesting that they drive their children to school, which was unacceptable to the District and also evidences that the District did not have operational or managerial control over Durham or its drivers.

On May 17, 2019, Mr. McConnell sent another letter to Durham outlining Durham's contract breaches. The letter noted that Durham had not corrected its deficient performance under the District-Durham Contract and that Durham was continuing to fail to cover the bus routes needed to transport students,

which was creating safety risks. Mr. Yohn had admitted that Durham had so few qualified drivers that its number of drivers was at the worst level ever. Mr. Yohn further admitted that the individuals who are seeking employment as drivers do not meet the standards for the position. Mr. McConnell implored Durham to correct its staffing and equipment deficiencies in order to provide the busing services that the District needed and the Contract required. Also, Durham was using drivers who had not been cleared by the District. Mr. McConnell advised Durham that failure to comply with the Contract was grounds for termination of the Contract, as provided therein, and that the District may act on its contractual right to hire a third-party vendor for bus services.

At the end of the 2018-2019 school year, Mr. Omslaer and Mr. McConnell discussed Durham's failure to perform under the District-Durham contract, and Mr. Omslaer expressed concerns over Durham's ability to cover bus runs. At this time, Mr. McConnell already knew from school board members and public complaints about the problems with Durham. Mr. McConnell and Mr. Omslaer had the responsibility of ensuring that the District could have school, which depended on having enough drivers to transport all the students to District buildings. And, Durham did not have enough drivers to meet those needs.

The District needed to seek help for Durham and compensate for its repeated and cumulative performance failures, which included: late arrivals and departures, failure to pick up students, Durham calling parents to take their own children to school for lack of drivers, Durham's missing sports runs, and the District-wide shut down due to lack of drivers in January 2019. The District received many phone calls from parents complaining about bus service for their children. The school board was under a lot of pressure. The school board members asked Mr. McConnell to do something and they characterized Durham as "terrible." Pressure from the school board and the public on Mr. McConnell motivated him to begin shopping for other transportation vendors.

Throughout the 2018-2019 school year, Durham had ongoing problems getting drivers and keeping them. In the Spring of 2019, Durham's complement of drivers was at the lowest levels since it began its relationship with the District. Indeed, on August 26, 2019, Robert Scarpa, Eastern Pennsylvania Regional Manager for Durham, emailed Mr. Omslaer asking whether Boyo or Krise could take over three bus routes that were open because Durham had no drivers for those runs. Thereafter, Durham did not object when the District reduced the number of Durham bus runs during the 2019-2020 school year, even though that meant less income for Durham, because Durham was unable to service those runs anyway. At the beginning of the 2019-2020 school year, August and September, the District had to give approximately 4 bus routes to Krise. As the school year progressed, the District gave more bus runs to Krise, as more drivers called off from work or were otherwise unavailable.

On September 16, 2019, Mr. McConnell wrote another letter to Durham requesting that Durham immediately remedy the deficient transportation services, stating that the District has repeatedly reached out to Durham to correct its performance issues. The letter requested that Durham correct the deficient staffing levels among its mechanics, which prevented timely repairs and created a shortage of available buses. The letter also noted that Durham had rotated through 3 different managers within one month at the start of the 2019-2020 school year, creating a lack of consistency and that dispatchers were not answering calls from the District or the public. Also, Mr. McConnell noted that one-third of the bus surveillance cameras were not functioning,

and he reminded Durham that it was contractually obligated to provide operational cameras on all buses.

At the start of the 2019-2020 school year, Durham had only 84 drivers to cover 98 routes. Durham started the 2019-2020 school year with significantly less drivers than were needed. Durham attempted to cover the open routes by directing drivers to drive multiple routes at different times affecting the timeliness of student arrivals to and departures from school. In this context, the District was forced to give more routes to Boyo and Krise. It was Mr. Omslaer's and Mr. McConnell's frustration with Durham's performance issues that, not only motivated them to find another transportation vendor, but required them to do so. However, even though Mr. Omslaer's comments reflected animus, the proximate cause and the legitimate reasons for changing bus companies was Durham's failure to provide adequate services under the District-Durham Contract, for a long period of time and after Mr. McConnell's repeated attempts to pressure Durham to remedy their failures. Moreover, the school board and Mr. McConnell, not Mr. Omslaer, independently decided to contract with Krise. Mr. Omslaer did not change bus vendors, although he supported such action to remedy Durham's failure to provide service. There simply is no evidence that the school board members or Mr. McConnell were motivated by animus to change bus vendors.

With regard to Durham employees who were not hired by Krise, there is no evidence that those employees were not hired for anti-union reasons. One employee never even applied and Bill Smith admitted that there was no evidence that the decision not to hire him was related to his membership in the Union, as other Union drivers hired by Krise had been, or his brief stint as a Union steward.

Also, the District did not commit an independent violation of Section 1201(a)(1) of the Act. 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 employee 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 employees 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 employee rights. Ringgold Educ. Ass'n v. Ringgold Sch. Dist., 26 PPER 26155 (Final Order, 1995).

Under the totality of the circumstances in this case, regardless of whether a reasonable driver working for Durham would have been coerced, intimidated, or restrained in exercising their right to assert or invoke the benefits of Union membership, the District's legitimate business reasons to remedy Durham's performance failures, after multiple attempts by the District to correct those failures over a long period of time, far outweigh any employee concerns over interference with employee/Union rights by changing bus vendors.

Accordingly, the District's Motion to Dismiss the charge of unfair practices alleging violations of section 1201(a)(1), (3) and (5) is hereby granted and the charge is hereby dismissed.

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 employe organization under PERA.
3. Durham employes are not public employes under PERA.
4. The District has never been a joint employer with Durham.
5. The Board does not have jurisdiction over the parties hereto.
6. The District has not violated Section 1201(a) (1), (3), or (5) of PERA.
7. The Board lacks subject matter jurisdiction over the claims presented herein, and the charge is properly dismissed.

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 and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-third day of November 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

Jack E. Marino, Hearing Examiner