

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MINERSVILLE AREA EDUCATIONAL :
SUPPORT PERSONNEL ASSOCIATION, :
PSEA/NEA :
 :
 :
 v. : Case No. PERA-C-09-423-E
 :
 :
MINERSVILLE AREA SCHOOL DISTRICT :

FINAL ORDER

The Minersville Area School District (District) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 8, 2011, to a January 19, 2011 Proposed Decision and Order finding that the District committed unfair practices in violation of Section 1201(a)(1) of the Public Employee Relations Act (PERA). For purposes of the exceptions, the Hearing Examiner's relevant findings are summarized as follows.

On January 12, 2009, the Minersville Area Educational Support Personnel Association, PSEA/NEA filed a Charge of Unfair Practices docketed at Case No. PERA-C-09-7-E, alleging that the District had unilaterally changed the bargaining unit custodians' schedules in retaliation for a grievance filed over prior scheduling changes. In response to questions posed by several of the custodians, on July 9, 2009, Superintendent M. Joseph Brady issued a memorandum to all bargaining unit members. The July 9, 2009 memorandum stated as follows:

TO: Custodial Staff
FROM: M. Joseph Brady, Superintendent
Minersville Area School District
DATE: July 9, 2009
SUBJECT: Shift Assignments

In the interest of keeping the record straight, these facts need to be understood:

1. The custodial union, your representative, filed an official complaint with the Pennsylvania Labor Relations Board asserting that the Superintendent cannot legally change shift assignments.
2. This complaint, initiated by local President James Quinn, resulted in a hearing at which time your president along with Bob Brown and a union spokesperson stated changing shifts violated state labor law.
3. The outcome of this complaint is still pending. Should the arbitrator rule as requested by your union you will never see personnel changed to day shift in the summer or holidays.
4. Complaining that the district implemented the action your leadership demanded makes one wonder who is speaking for the majority of the membership.

(underlining in original).

The Hearing Examiner found that Superintendent Brady's July 9, 2009 memorandum threatened bargaining unit employes and demeaned the status of the union. The Hearing Examiner therefore concluded that Superintendent Brady's July 9, 2009 memorandum had a

tendency to coerce employes in the exercise of protected rights in violation of Section 1201(a)(1) of PERA.

The District argues on exceptions that the charge is now moot because the bargaining unit employes are no longer represented by the Minersville Area Educational Support Personnel Association, PSEA/NEA. However, on October 8, 2010, in Case No. PERA-R-10-232-E, the Board certified Teamsters Local No. 49 as the employes' exclusive representative. A Charge of Unfair Practices is not rendered moot by the change in the employes' certified representative. Attorney General Investigators Association v. Commonwealth of Pennsylvania (Office of Attorney General), 32 PPER ¶32005 (Proposed Decision and Order, 2000). Accordingly, the District's exception is dismissed.

As to the merits, the District argues that the Hearing Examiner erred in concluding that the District violated Section 1201(a)(1) of PERA, because the July 9, 2009 memorandum could not be construed as threatening in nature or attempting to prevent employes from exercising their collective bargaining rights. A violation of Section 1201(a)(1) arises where the employer's actions, when viewed within the totality of the circumstances, would tend to influence a reasonable employe from, *inter alia*, seeking assistance from the union. Wattsburg Education Association v. Wattsburg Area School District, 35 PPER 54 (Final Order, 2004). Even if the employer's actions are carried out with the purest of intentions, if they would tend to coerce a reasonable employe from engaging in a protected right, they nevertheless violate Section 1201(a)(1) of PERA. Northwestern Education Association v. Northwestern School District, 24 PPER ¶24141 (Final Order, 1993); Montgomery County Community College v. PLRB, 16 PPER ¶16156 (Court of Common Pleas, 1985).

Upon review of the record and the totality of circumstances, we agree with the Hearing Examiner's assessment of Superintendent Brady's July 9, 2009 memorandum. Superintendent Brady's statement in Paragraph three that "[s]hould the arbitrator rule as requested by your union you will never see personnel changed to day shift in the summer or holidays" clearly can be perceived as a threat having a tendency to coerce employes from future grievance filings or collective bargaining. In addition, Superintendent Brady's questioning of "who is speaking for the majority of the membership" would likewise have a tendency to coerce employes in the selection of their representative, which is also a statutorily protected activity. As such, regardless of Superintendent Brady's intentions in issuing the memorandum, the content of the memorandum would have a tendency to coerce employes from engaging in protected activities in violation of Section 1210(a)(1) of PERA.

After a thorough review of the exceptions and all matters of record, we find that the Hearing Examiner did not err in finding that Superintendent Brady's July 9, 2009 memorandum to bargaining unit members would have a tendency to coerce employes from engaging in protected activities, and thus the District violated Section 1201(a)(1) of PERA. Accordingly, the District's exceptions shall be dismissed, and the January 19, 2011 PDO shall be made final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Minersville Area School District are hereby dismissed, and the January 19, 2011 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this fifteenth day of March, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

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AFFIDAVIT OF COMPLIANCE

Minersville Area School District hereby certifies that it has
ceased and desisted from its violation of Section 1201(a) (1) of the
Public Employe Relations Act; that it has posted a copy of the Final
Order and Proposed Decision and Order as directed; and that it has
served a copy of this affidavit on the Teamsters Local No. 429.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
The day and year first aforesaid.

Signature of Notary Public