

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION,  
PSEA/NEA

v.

READING SCHOOL DISTRICT

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: Case No. PERA-C-10-381-E  
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**PROPOSED DECISION AND ORDER**

On October 18, 2010, the Reading Education Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Reading School District (District) violated Section 1201(a)(1), (2), (3), (4) & (5) of the Public Employe Relations Act (PERA) based on the behavior of the Intermediate High School principal during two meetings with Union representatives and on the District's alleged solicitation and circulation of a petition supporting the withdrawal of a grievance filed by the Union.<sup>1</sup>

On November 12, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on Monday, March 7, 2011, in Reading, Pennsylvania. After several granted continuances at the request of the parties, the hearing was held on November 14, 2011. During the hearing, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 4).
3. Robert H. Miller was the Union President during the 2010-2011 school year. Russell James Diesinger is a teacher at the Senior High School and the Union's Vice President for the High School level. Dennis J. Campbell is the Principal of the Reading Intermediate High School. David ("Rick") Immendorf is the Grievance Chairman for the Union. (N.T. 5-6, 31-32, 34, 42, 48).
4. The District's Intermediate High School first opened at the beginning of the 2010-2011 school year. The Intermediate High School contains ninth and tenth graders, and the Senior High School contains eleventh and twelfth graders. As the Intermediate High School opened for 2010-2011, the Union filed a grievance with Mr. Campbell stating that the faculty at the Intermediate High School were not scheduled to receive a thirty-minute, duty-free lunch, as required by contract. (N.T. 40-42, 48-49).
5. On September 9, 2010, Mr. Miller, Mr. Diesinger and Mr. Immendorf held a level-two grievance meeting with Mr. Campbell. The purpose of the meeting was to discuss the lunch scheduling grievance. Prior to the September 9, 2010 meeting, Mr. Campbell gave Mr. Miller, Mr. Diesinger and maybe Mr. Immendorf a copy of every teacher's schedule to review prior to the meeting. The schedules showed that every teacher had fifty minutes for lunch and fifty minutes for preparation. (N.T. 42, 45, 47, 49).
6. When Mr. Diesinger and Mr. Immendorf arrived for the September 9, 2010 meeting, they still believed that the teachers had less than thirty minutes for lunch

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<sup>1</sup> At the hearing, the Union withdrew its claims under Section 1201(a)(2). (N.T. 3).

even though the schedules demonstrated otherwise. The conversation became heated. Mr. Campbell became angry because the Union persistently maintained that the lunch period was less than thirty minutes. At this meeting, Mr. Campbell said: "Don't fuck with me," and asked Mr. Diesinger and Mr. Immendorf to leave his office. (N.T. 45, 47, 49-51).

7. On September 22, 2010, Mr. Diesinger met with Mr. Campbell in his office at the Intermediate High School to inform Mr. Campbell that he was attending the scheduled faculty meeting instead of Mr. Immendorf. (N.T. 34, 51).

8. When Mr. Diesinger entered Mr. Campbell's office that day, they shook hands and Diesinger said that " I just want to let you know I was in the building for the faculty meeting and I didn't want to step on your toes (or shoes)." (N.T. 35, 52).

9. Mr. Campbell walked around his desk and used his hands to indicate that Mr. Campbell was at a higher level of rank than Mr. Diesinger, who Mr. Campbell indicated was down around Mr. Campbell's ankle. Mr. Campbell told Mr. Diesinger that, from that level, he could not even touch his shoes. Then Mr. Campbell leaned toward Mr. Diesinger and said: "Don't fuck with me. I'm telling you don't fuck with me." The tone of Mr. Campbell's voice was aggressive and intimidating. (N.T. 36, 52).

10. Mr. Campbell then indicated that he did not want the "fucking" Union in his building and that he would turn the teachers against the Union. (N.T. 36-37).

11. After that exchange in Mr. Campbell's office, Mr. Diesinger and Mr. Campbell attended a faculty meeting in the cafeteria. At the faculty meeting, Mr. Campbell told teachers that he was allowing Mr. Diesinger to remain at the meeting, although he did not have to under school policy. Mr. Campbell told Mr. Diesinger to bring on as many grievances as he wanted. (N.T. 37-38, 41, 53-54, 57).

12. Kelly Ann Fuller learned about the thirty-minute lunch grievance from Mr. Campbell at an opening faculty meeting at the start of the 2010-2011 school year. This was not the September 22, 2010 faculty meeting in the cafeteria attended by Mr. Diesinger. (N.T. 59, 69).

13. Sometime after the September 22, 2010 faculty meeting, Ms. Fuller met with Elizabeth Miller, Aliche Kutz and Kelly Halbrich and Mr. Stuck at the Black Box Theater (the Intermediate High School Auditorium) to formulate a petition to be submitted to the Union leadership requesting that the scheduling grievance be withdrawn. A total of ten teachers contributed to the writing of the petition. No administrators were present at this meeting or helped plan the meeting. Ms. Miller kept the petition in her classroom for teachers to stop by and sign. Mr. Campbell had no knowledge of the petition at this time, and he did not encourage teachers to sign the petition. (N.T. 54, 60-61, 67-68).

14. The Petition provides as follows:

To Bob Miller, Russ Diesinger, and other REA [Union] Officers:

We the undersigned would like to state opposition to the grievance that was recently filed against Mr. Dennis Campbell, Principal of the Reading Intermediate High School.

It is our belief that the grievance is based on incorrect information, and we would like to officially remove our names from this grievance. The 30 minute lunch required by the contract is in fact being met for all staff members. We also disagree with the filing of a grievance on behalf of all staff members without any notification.

Furthermore, we are respectfully requesting that no future grievances be filed on behalf of the entire Reading Intermediate High School faculty.

This unfortunate event has created an adversarial environment for the start of our new venture and has upset our staff due to the lack of communication between union officers and our members.

(Union Exhibit A).

## **DISCUSSION**

In its charge of unfair practices, the Union claims that Mr. Campbell's statements and behavior at meetings with Union representatives on September 9<sup>th</sup> and 22<sup>nd</sup> of 2010 was discriminatory, dominating and coercive in such a manner so as to interfere with and restrain Union activity. The Union further claims that the District engaged in direct dealing with unit members and interfered with Union business.

### **1. Direct Dealing**

The Union claims that, subsequent to the meetings on September 9<sup>th</sup> and 22<sup>nd</sup> 2010, the following occurred:

Mr. Campbell, through a School District employee, arranged a meeting among members of the bargaining unit employed at the RIHS [Reading Intermediate High School]. At that meeting a prepared petition, prepared by the administration of the RIHS, directed to the REA [Union] was circulated among the members of the bargaining unit at the direction of administration, to solicit signatures urging the REA [Union] not to proceed with a recently filed grievance [i.e., the 30-minute lunch grievance].

(Specification of Charges ¶ 10).

Although Mr. Campbell informed Ms. Fuller of the thirty-minute lunch grievance at a faculty meeting at the start of the 2010-2011 school year, the record does not support a finding that Mr. Campbell orchestrated, knew of or had any involvement in the decision to create the petition or in its actual creation, formulation or circulation. Sometime after the September 22, 2010 faculty meeting, Ms. Fuller met with Elizabeth Miller, Aliche Kutz, Kelly Halbrich and Mr. Stuck at the Black Box Theater to create the petition. A total of ten teachers contributed to the writing of the petition. No administrators were present at this meeting or helped plan the meeting. Ms. Miller kept the petition in her classroom for teachers to stop by and sign. Mr. Campbell had no knowledge of the petition at this time, and he did not encourage teachers to sign the petition. (F.F. 12-13). Accordingly, this claim, in the nature of direct dealing or interfering with Union business, is dismissed as unfounded.

### **2. Discrimination**

In a discrimination claim under Section 1201(a)(3) and (4), the complainant has the burden to establish the following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew that the employee engaged in protected activity; and (3) that the employer engaged in conduct that was motivated by the employee's involvement in 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).

The record contains no evidence indicating that any of the Union officials or unit employees filed an affidavit, petition or complaint with the Board or gave information or testimony in a Board proceeding, as required by Section 1201(a)(4), as of the time of the incidents complained of herein. Accordingly, the charge under Section 1201(a)(4) is dismissed.

Also, Section 1201(a)(3) provides that public employers are prohibited from "[d]iscriminating in regard to hire or tenure of employment or any term or condition of employment . . ." 43 P.S. § 1101.1201(a)(3). A necessary element of a discrimination claim is that a public employer adversely or negatively affected an employee's terms or conditions of employment or employment status. The record in this case does not show that any employees or Union representatives suffered any discipline or other adverse employment action regarding terms and conditions of employment or employment status. Accordingly, the charge under Section 1201(a)(3) is also dismissed.

### **3. Interfering, Restraining or Coercing**

The Union also claims that Mr. Campbell's behavior during the two meetings in September constituted an interference, restraint and coercion of employee rights under Section 1201(a)(1). In Dormont Police Ass'n v. Dormont Borough, 32 PPER ¶ 32119 (Proposed Decision and Order, 2001), Hearing Examiner Lassi properly reiterated the Board's law regarding interference claims under the PLRA, which is the same here. Examiner Lassi stated as follows:

The Board will find an independent violation of Section 6(1)(a) of the PLRA if the actions of the employer, in light of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employees have been shown, in fact, to have been coerced. Upper Mount Bethel Township, 28 PPER ¶ 28017 (Proposed Decision and order, 1996) (citing Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1995)). The standard for determining the existence of a Section 6(1)(a) violation does not require proof of anti-union motivation. Upper Mount Bethel, supra (citing Woodland Hills School District, 13 PPER ¶ 13298 (Final Order, 1982)). Even an inadvertent act by an employer may interfere with, restrain or coerce employees in the exercise of protected rights. Woodland Hills, supra.

Dormont Borough, 32 PPER at 303.

In Dormont Borough, the Borough defended against union claims (that its police chief did not engage in unfair practices when he made threatening and profane remarks to union representatives) under the theory that Board law allows for parties to assert their contractual and statutory rights in a loud, insistent manner recognizing that labor management discussions often become antagonistic, heated and emotional. Dormont, supra. In Dormont, the union representative advised the police chief that his posting of a new schedule violated the collective bargaining agreement. In response, the chief became irate and screamed, "fuck it, then file a fucking grievance. I want to tell you this, I'm a good ass fucker. It's coming, I'm going to fuck you . . . in the ass every chance I get."

In finding an unfair labor practice, Hearing Examiner Lassi noted the following:

[T]he Borough's argument fails to account for the police chief's status as a supervisor and/or member of management, as demonstrated by his exclusion from the bargaining unit and the fact that he is the contractually designated representative of management at the first step of the grievance procedure. Under either version of the conversation at issue that was offered at the hearing, the police chief responded to a police officer/union representative's assertion that the chief had violated the CBA by threatening retaliatory action. In view of the chief's supervisory and/or managerial status vis-a-vis police officers such as Officer Orchowski, and the fact that the chief is the managerial representative to whom police officers must initially present their grievances, the chief's threatening statements clearly would have a tendency to coerce officers in the exercise of their statutory right to present their grievances to their employer. Consequently, a violation of Section 6(1)(a) of the PLRA will be found.

Simply stated, it is the fact that the chief occupies a position in the chain of command where he may reasonably be viewed as having the ability to carry out his threat of retaliation, rather than the mere fact that he used profanity or became angry, that is determinative of the outcome here. Therefore, the authority cited by the Borough is not on point and does not warrant a different result.

Dormont Borough, 32 PPER at 303 (footnotes omitted).

In this case, I credit Mr. Diesinger's testimony regarding the language that Mr. Campbell used during the meetings of September 9<sup>th</sup> and 22<sup>nd</sup>.<sup>2</sup> During the September 9, 2010 meeting, the conversation between Mr. Campbell and Mr. Diesinger became heated, and Mr. Campbell said: "Don't fuck with me." Mr. Campbell then ordered Mr. Diesinger and Mr. Immendorf to leave his office. During the September 22, 2010 meeting, Mr. Diesinger shook hands with Mr. Campbell before the faculty meeting and said that he just wanted to let Mr. Campbell know that he was there for the meeting and that he did not want to step on any toes. At this time, Mr. Campbell walked around his desk and used his hands to indicate that Mr. Campbell was at a higher level of rank than Mr. Diesinger, who Mr. Campbell indicated was down around Mr. Campbell's ankle. Mr. Campbell told Mr. Diesinger that, from that level, he could not even touch his shoes. Then Mr. Campbell leaned toward Mr. Diesinger and, with an aggressive, intimidating tone, said: "Don't fuck with me. I'm telling you don't fuck with me." Mr. Campbell then indicated that he did not want the "fucking" Union in his building and that he would turn the teachers against the Union.

I believe that this case is closely analogous to Dormont Borough, wherein Examiner Lassi found an unfair practice. Mr. Campbell's use of profanity and his display of anger and aggression may not alone constitute interference or coercion that would rise to the level of an unfair practice. However, Mr. Campbell is a contractually designated managerial representative in the grievance procedure. As emphasized by Examiner Lassi in Dormont Borough, it is the fact that Mr. Campbell has the managerial authority to carry out his threat of turning the teachers against the Union officials through coercion and other means that makes his statements threatening in violation of Section 1201(a)(1). Mr. Campbell's repeated threat of "Don't fuck with me. I'm telling you don't fuck with me," would interfere with a reasonable person's ability to effectively bring future grievances to Mr. Campbell or to attempt to further resolve the lunch scheduling grievance with him. Additionally, Mr. Campbell told Mr. Diesinger to bring on as many grievances as he wanted in the presence of bargaining unit members. Such a statement, immediately following the private threats made by Mr. Campbell in his office, would lead a reasonable person to believe that filing grievances would constitute "fucking" with Mr. Campbell and would risk incurring his angry way of dealing with grievance disputes. Under the totality of the circumstances, Mr. Campbell's statements, taken together, have a chilling effect on exercising the protected right to pursue the resolution of contractual disputes that are of concern to labor.

Accordingly, the District has engaged in unfair practices in violation of Section 1201(a)(1) of PERA.

#### 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.

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<sup>2</sup> Mr. Campbell does not deny using profanity at the September 9<sup>th</sup> meeting and acknowledges that he became angry at that meeting because the Union representatives persisted after he demonstrated that teachers were receiving more than 30-minute lunch periods. (N.T. 50-51). Mr. Campbell denies saying, during the September 22, 2010 meeting: "Don't fuck with me; I'm telling you don't fuck with me." (N.T. 53). However, I credit the testimony of Mr. Diesinger that Mr. Campbell made those statements. (N.T. 36).

2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices within the meaning of Section 1201(a)(1).
5. The District has not committed unfair practices within the meaning of Section 1201(a)(2).
6. The District has not committed unfair practices within the meaning of Section 1201(a)(3) or (4).
7. The District has not committed unfair practices within the meaning of Section 1201(a)(5).

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

that the District shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Take the following affirmative action:
  - (a) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and
  - (b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance.

**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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifth day of March, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION, :  
PSEA/NEA :  
v. : Case No. PERA-C-10-381-E  
READING SCHOOL DISTRICT :

**AFFIDAVIT OF COMPLIANCE**

The Reading School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) of the Public Employee Relations Act; that it has posted a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days; and that it has served a copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Signature of Notary Public