

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

CENTRAL DAUPHIN EDUCATION :  
ASSOCIATION PSEA/NEA :  
v. : Case No. PERA-C-02-271-E  
CENTRAL DAUPHIN SCHOOL DISTRICT :

**FINAL ORDER**

Central Dauphin School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 14, 2003 from a Proposed Decision and Order (PDO) issued April 24, 2003.<sup>1</sup> The hearing examiner had found that under the totality of circumstances the District had violated Section 1201(a)(1) of the Public Employee Relations Act (PERA) by coercing employees in the exercise of rights protected under Article IV of PERA. On June 5, 2003, the Central Dauphin Education Association, PSEA/NEA (Association) filed a timely brief in response to the exceptions. After a thorough review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDING OF FACT

25. Prior to Ms. Suski leaving employment at Central Dauphin in June of 2000, she met with Dr. Hasson and Yvonne Hollins, assistant superintendent for secondary education, regarding the behavior of the principal involved in the alleged sexually harassment charge filed by Ms. Romberger. (N.T. 112).

26. In response to questions from Mr. Shank regarding the status of Ms. Suski's PDE 338P form, Dr. Hasson stated that she wanted to be sure that Ms. Suski's present statements in connection with the Romberger grievance are the same as she had previously told her and Ms. Hollins prior to Ms. Suski leaving the District. (N.T. 115).

DISCUSSION

On May 29, 2002, the Association filed a Charge of Unfair Practices claiming that the District violated Section 1201(a)(1) and (5) of PERA by attempting to tamper with a witness, interfering with an employee's right to process a grievance, and refusing to act in good

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<sup>1</sup> The District also filed a request for oral argument, which is denied since the exceptions raise no novel issue of law or fact, and all arguments are adequately addressed in the briefs.

faith in the processing of a grievance.<sup>2</sup> The Secretary issued a Complaint and Notice of Hearing on an amended charge, and on October 18, 2002, a hearing was held before a hearing examiner. Both parties presented evidence and testimony at the hearing and both filed post-hearing briefs.

Through the evidence presented at the hearing, it was revealed that the Association's charge stemmed from the District's conduct during a grievance the Association had filed over alleged sexual harassment of a bargaining unit employee (the "Romberger grievance"). In the course of investigating the Romberger grievance, the Association became aware that a former employee of the District, Lori Suski, had pertinent information and was now working as a principal at the Middletown School District.

At the time, Ms. Suski was seeking to obtain her permanent Department of Education Level II certification necessary to be retained as a principal for the upcoming school year in the Middletown School District. The Pennsylvania Department of Education's certification process required her to obtain signatures on a PDE 338P form attesting to her employment from her previous supervisor at Central Dauphin School District and her current superintendent at Middletown School District. The PDE 338P form also contained a section where each supervisor could attest to Ms. Suski's good moral character.

The testimony before the hearing examiner revealed that Ms. Suski sent a PDE 338P form to Barbara Hasson Ph.D., the Superintendent of the District. Dr. Hasson returned the signed form to Ms. Suski on February 11, 2002. However, because Dr. Hasson did not initial the section certifying Ms. Suski's moral character, Ms. Suski returned the original form to her for completion. The Association alleged that on May 7, 2002, Dr. Hasson stated to Gary Shank, Superintendent of the Middletown School District, that she would not complete Ms. Suski's PDE 338P form (attesting to her good moral character) until she heard what Ms. Suski's testimony would be regarding the Romberger sexual harassment grievance.

On April 24, 2003, the hearing examiner issued a PDO, in which he found that the District violated Section 1201(a)(1) of PERA.<sup>3</sup> Relying on Clearfield County Association of Professional Employees v. Clearfield County, 27 PPER ¶27087 (Final Order, 1996), the hearing examiner noted that an employer interferes with employees' Article IV rights, and violates Section 1201(a)(1), when it makes a statement which tends to coerce a potential witness in a grievance arbitration. The hearing examiner concluded that Dr. Hasson's statement would tend to be

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<sup>2</sup> On June 12, 2002, the Secretary of the Board requested that the Association amend the charge noting that the allegations failed to specify that the charge was timely filed within four months of the alleged unlawful practice. On June 29, 2002, the Association filed an amendment to the charge correcting this deficiency.

<sup>3</sup> The hearing examiner dismissed the Section 1201(a)(5) claim, noting that the facts did not support the charge. No exceptions have been filed to this determination.

coercive, and therefore the District violated Section 1201(a)(1) of PERA.

The District filed timely exceptions to the hearing examiner's finding and conclusions arguing first that the hearing examiner erred in basing the finding of an unfair practice on a cause of action not raised by the amended charge. In this regard, the Board has recognized that a "[r]espondent cannot and should not be compelled to defend a charge that asserts one type of alleged conduct and at the hearing be confronted with evidence of various other types of alleged improper conduct." Independent State Store Union v. Commonwealth of Pennsylvania, Liquor Control Board, 22 PPER ¶22009 (Final Order, 1990).

The District contends that the issue raised by the Association was whether the District's withholding Ms. Suski's Department of Education form had actually interfered with the processing of the Romberger grievance. The charge, however, alleges that Dr. Hasson's May 7, 2002 statement, that she was not going to sign Ms. Suski's certification until she heard her testimony, "represent[ed] an attempt to tamper with the Association's witness, interfer[ed] with an employee's right to process a grievance, and represent[ed] a refusal on the part of the [District] to act in good faith in the processing of the sexual harassment grievance." (Amended Specification of Charges). As limited by the amended charge, the cause of action raised is whether Dr. Hasson's statement interfered with the Romberger grievance in violation of Section 1201(a)(1) of PERA.

Section 1201(a)(1) of PERA makes it an unfair practice for an employer to actually interfere, restrain or coerce employees in the exercise of rights guaranteed in Article IV of PERA. Additionally, an employer's conduct that is inherently destructive to employees' rights is unlawful under Section 1201(a)(1) regardless of the employer's motive. Under such conditions it must be shown that the conduct had a tendency to coerce "employees" in the exercise of Article IV rights under PERA. AFSCME, local 394 AFL-CIO v. City of Philadelphia, 24 PPER ¶ 24112 (Final Order, 1993).

Under the tendency to coerce standard, Section 1201(a)(1) requires that there must be some conduct by the employer which, in the normal course would involve an expectation of disclosure to "employees" in the bargaining unit. Here, however, the record indicates that the Middletown School District Superintendent, Mr. Shank, attended an administrative meeting concerning Dauphin County Technical School, where Dr. Hasson was also in attendance. At that meeting, Mr. Shank initiated a conversation with Dr. Hasson inquiring as to the status of the PDE 338P form on behalf of Ms. Suski. Dr. Hasson responded that she was waiting to insure that Ms. Suski's testimony was consistent with her prior statement before she could attest to Ms. Suski's moral character.

We do not find, on this record, that Dr. Hasson's response to Mr. Shank's inquiry for the ostensible purpose of informing Ms. Suski as to the status of the PDE 338P form had a tendency to coerce employees in the bargaining unit at the District. The statement was made to the superintendent of another school district, and intended only for Ms. Suski, who was, at all relevant times, an administrator and not an "employee" for purposes of PERA. We do not find that there was any

reasonable expectation by Dr. Hasson that her reply to Mr. Shank's inquiry would find its way back to "employees" in the bargaining unit at the District, which would rise to the status of an unfair practice. Accordingly, we do not find Dr. Hasson's statement would have a tendency to coerce bargaining unit employees at the District.

Furthermore, there was no support for a charge of actual interference with the Romberger grievance. In Clearfield County, supra, the employer made a threat to a third-party partial arbitrator, which in turn interfered with the employees' protected rights to a lawful interest arbitration process. Dr. Hasson's statement, on its face, as reflected in additional finding of fact number 26 above, was that Dr. Hasson would attest to Ms. Suski's moral character after Ms. Suski gave a statement or testified consistently in the Romberger matter. The record does not support that Dr. Hasson intended to influence the substance of Ms. Suski's testimony. Dr. Hasson noted that she wanted to see if Ms. Suski testified consistent with what she had previously said to her and Ms. Hollins, and recognized that the "consistency" of Ms. Suski's story would be independently verifiable by Ms. Hollins. There is nothing in the record to suggest that Ms. Suski was hindered in any way from testifying truthfully in the Romberger grievance.

Moreover, despite Ms. Suski's reaction to Dr. Hasson's statement by indicating to Mr. Ferguson that she would not testify without the signed PDE 338P form, we note that the Association was already privy to her testimony from discussions with her prior to May 7, 2002, and could have compelled her testimony at the arbitration hearing through use of a subpoena. Accordingly, under the totality of the circumstances, Dr. Hasson's May 7, 2002 statement would not have interfered with the Association's presentation of the Romberger grievance. Accordingly, we find no interference with the Association's ability to process grievances under section 1201(a)(1) of PERA.

After a thorough review of the exceptions and all matters of record, the Board concludes that there is insufficient evidence to support the charge that the District's conduct interfered with the presentation of the Romberger grievance, or tended to interfere with employees' exercise of Article IV rights. Accordingly, the hearing examiner erred in finding a violation of Section 1201(a)(1) of PERA. As such, the District's exceptions will be sustained and the complaint dismissed.

#### CONCLUSIONS OF LAW

That CONCLUSIONS number 1 through 3, and 5 as set forth in the Proposed Decision and Order, are hereby affirmed and incorporated herein by reference and Conclusion number 4 is hereby vacated.

6. The District has not committed an unfair practice within the meaning of section 1201(a)(1) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order of April 24, 2003 are hereby sustained, and the Order on page 8 of the Proposed Decision and Order is hereby vacated and set aside.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the Charge of Unfair Practices is dismissed and the Complaint issued thereon is rescinded.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Anne E. Covey, Member, this nineteenth day of August, 2003. 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.