COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MILLERSBURG EDUCATION ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-05-372-E
	:	
MILLERSBURG AREA SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On August 22, 2005, the Millersburg Education Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Millersburg Area School District (District or Respondent) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (Act) by using an intimidating letter to keep a grievant from appealing a grievance to a school board hearing. The Association filed an amended charge on September 13, 2005.

On October 12, 2005, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties and December 20, 2005, in Harrisburg, was assigned as the time and place of hearing, if necessary.

The hearing was necessary and was held as scheduled before Thomas P. Leonard, Esquire, a hearing examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Examiner, on the basis of the testimony presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That Millersburg Area School District is a public employer within the meaning of Section 301(1) of the Act.

2. That Millersburg Education Association is a public employe within the meaning of Section 301(2) of the Act.

3. That the Association is the exclusive representative of the professional employes of the District.

4. That from 1997 to July 1, 2004 Vicky England-Cloos was a professional employe of the District, teaching 10th and 12th grade English. She now teaches in another Pennsylvania school district. (N.T. 8-9).

5. That on or about April 7, 2004, England-Cloos was in the midst of teaching a 10th grade English class during eighth period, the last period of the day. Class order was disrupted when several students were engaged in talking. England-Cloos determined that the talking was due to the difficulties one of the students was having in his romantic life. England-Cloos determined that she would deal with the disruption by levity, asking when the student “was going to get his love life together.” (N.T. 9-10)

6. That England-Cloos further determined that she would deal with the disruption by tallying on the blackboard how many times the boy and girl had broken up in the last two to three weeks. Finally, she asked the students to write on a piece of paper the number of days before the two students broke up again, to put the piece of paper in a bag and put an unspecified coin (nickel, dime or quarter) into the bag. She then placed the bag and the money in a closet. The class then resumed for the last few minutes of the period. (N.T. 10)

7. That the next class day, the vice principal Sean Hunter, came to England-Cloos' class and asked for the bag and the money. He said he was doing that on orders of the principal, S. Kirk Miller, who had received a complaint from the parents of the girl in the putative romance. Hunter told her not to talk about the matter in the class later that day. (N.T. 11)

8. That on April 11, 2005, Miller wrote a letter to England-Cloos asking her to attend a meeting on April 12 to discuss the incident. He noted that his concerns were over "the potential of the promotion of gambling during the class period as well as a lack of concern for the mental welfare of a 9th and 10th grade student." (N.T. 39, 63, District Exhibit 8)

9. That on April 14, 2005, Miller issued a letter to England-Cloos, informing her that she would be subject to a disciplinary action of a two-day suspension without pay for the classroom incident of April 7, 2005. The letter stated, in relevant part, "Your actions in collecting the money, distributing the tally sheets, and communicating on the blackboard, all contribute to a welfare concern of the parents of [name deleted by Examiner], a 9th grade student." N.T. 14, District Exhibit 10)

10. That also on April 14, Miller notified England-Cloos of a meeting to be held on April 15 at the end of the school day, "a required disciplinary action hearing," under Board Policy #417. (N.T. 42, 63, District Exhibit 11)

11. That on April 29, 2006, England-Cloos then filed a written grievance over the two-day suspension, alleging the suspension was without just cause. (N.T. 14-15, District Exhibit 12)

12. That on May 3, Miller responded to the grievance by scheduling a grievance meeting on May 4. (N.T. 43, 63, District Exhibit 13)

13. That on May 5, Miller wrote to England-Cloos that it was his opinion that the May 4 meeting "provided no new information" to change his recommendation of a two-day suspension. (N.T. 37, 63 Association Exhibit 2)

14. That on May 12, England-Cloos filed an appeal of Miller's decision to the Superintendent. (N.T. 49, 63 District Exhibit 15)

15. That on May 19, 2005, Superintendent Fronk held an appeal meeting in his office over the England-Cloose grievance. Also present at the meeting were Miller, Hunter, Wendy Leary, PSEA UniServ Representative, and Mr. Price, a building representative. (N.T. 50, District Exhibit 16).

16. That on May 26, Fronk wrote to England-Cloos that he had reached the following determination (in relevant part):

1. That Mrs. England-Cloos did in fact participate in a lottery whereby two students were ridiculed by publicly attempting to guess a break-up date.

2. That the money collected was indeed viewed by students as a reward for guessing the appropriate date of the break-up indicating a gambling aspect. Also admitted by Mrs. England-Cloos to be a "friendly wager."

3. Omitted by Hearing Examiner

4. Omitted by Hearing Examiner

5. Omitted by Hearing Examiner

6. As a result of the findings listed above and the new evidence learned at the meeting of May 19, 2005, in the event that this issue goes before the Board of Education, I will have no choice but to recommend more severe discipline.

(N.T. 17, 54, 63, Association Exhibit 3, District Exhibit 17)

17. That Fronk also testified that the reason for informing England-Cloos that he would have to recommend more severe discipline if she took her case to the Board of School Directors was because he did not want to put the students through a school board hearing. (N.T. 54)

18. That Ms. England-Cloos decided that she would not appeal the two- day suspension to the school board because she was fearful that she would face additional punishment if she appealed. (N.T. 18)

DISCUSSION

The Association alleges that the District violated the Act by interfering with the Association's right to pursue a grievance on behalf of a disciplined member in accordance with the parties' collective bargaining agreement.

The Board will find an employer in violation of Section 1201(a)(1) of the Act if the actions of the employer, in light of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employes have been shown, in fact, to have been coerced. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1995). Anti-union intent or motive is not a necessary element in establishing a violation of Section 1201(a)(1) of the Act. Woodland Hills School District, 13 PPER ¶ 13298 (Final Order, 1982). Even an inadvertent act by an employer may interfere with, restrain or coerce employes in the exercise of protected rights. Woodland Hills School District, supra. Threatening employes for exercising their protected right to file grievances is a violation of Section 1201(a)(1). SEPTA, 16 PPER ¶ 16155 (Proposed Decision and Order, 1985), 17 PPER ¶ 17038 (Final Order, 1986).

The filing of grievances is an activity protected by the Act "regardless of whether the employe's understanding of the collective bargaining agreement is correct." Commonwealth of Pennsylvania, Department of Public Welfare, Somerset State Hospital, 27 PPER ¶ 27086 at 191 (Final Order 1996). In a case strikingly similar to the posture of the present dispute, Hearing Examiner McConnell has held that a decision to recommend an increase in discipline expressly because of a decision to appeal a certain disposition in the parties' grievance procedure constitutes interference with the protected right of employes to process grievances. PSSU Local 668, SEIU v. Dauphin County, 27 PPER ¶ 27170 (Proposed Decision and Order, 1996), citing Northwestern School District, supra.

As set forth in the facts above, the Association has proven by clear and convincing evidence that Superintendent Fronk threatened to increase the charges and the punishment against England-Cloos for the April 7, 2005 incident if she took the grievance to the school board level. Fronk wrote in his letter to Ms. England-Cloos, "[I]n the event that this issue goes before the Board of Education, I will have no choice but to recommend more severe discipline." This statement, to any reasonable observer, chills the association and its members from the full and free exercise of their protected rights, unfettered with the fear of reprisal. The Superintendent's message was clearly designed to discourage an appeal to the school board, the next step in the full use of the grievance procedure. The District has violated Section 1201(a)(1) of the Act.

In its defense, the District has two arguments. The first argument is that in the May 19 meeting, "new information" was learned, i.e. that there was a "gambling aspect" to the day in question. The District bases this argument on England-Cloos' admission in the May 19 meeting that she had set up a "friendly wager" on the day. Because of this alleged new information, the Superintendent believed he would have had just cause to bring additional charges against the teacher. The problem with this argument is that from the start of the administration's involvement in this matter, one day after the incident, District administrators knew that England-Cloos had collected money and slips of paper from the students. To any reasonable observer, this would have created at least the suspicion of some kind of gambling. Indeed, in Miller's April 11, letter, he refers to the "potential for the promotion of gambling." Therefore, it is hard to believe that the District really acquired new information on May 19. In any event, even if one accepts as true that the District obtained new information on May 19, then basic notions of due process required that the District at that time to file a new charge alleging gambling, rather than holding the threat of new punishment over her head to discourage an appeal.

The District's second argument in its defense is that the Superintendent wanted the England-Cloos grievance to end at his level for the students' welfare. His desire to spare students from a school board hearing is understandable. However worthy such an attitude may be, the Association and its members may not be forced to give up their statutory and contractual rights to spare students the discomfort of a school board hearing.

In this case, England-Cloos testified credibly that the Superintendent's letter in fact did act to coerce her from filing an appeal to the District's Board of School Directors. Ms. England-Cloos tesitifed credibly that she was concerned that if she appealed to the Board she might also face additional punishment. This conduct violates Section 1201(a)(1) of the Act.

The Association also alleges a Section 1201(a)(3) violation, which contends that Fronk's May 26 letter constituted a violation of Section 1201(a)(3) of the Act. In order to sustain a charge of discrimination under Section 1201(a)(3) of the Act the complainant must prove a prima facie case. The elements of a prima facie case are that the employe engaged in protected activity, the employer was aware of that protected activity, and but for the protected activity the adverse action would not have been taken against the employe. Saint Joseph's Hospital, 473 Pa. 101, 373 A.2d 1069 (1977). The complainants must establish these three elements by substantial and legally credible evidence. The Union must establish these three elements by substantial evidence. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974). St. Joseph's Hospital, supra. In a charge of discrimination it is the employer's motivation which creates the offense. Perry County v. PLRB, 364 A.2d 808(Pa. Cmwlth. 1994)

As mentioned above, Superintendent Fronk stated that he was discouraging a school board hearing in order to spare students the experience of such a hearing. Fronk's desire to protect students does have a certain surface appeal. However, the Superintendent's testimony does not change the fact that he threatened to recommend more serious discipline if the Association exercised its statutory and contractual grievance rights of taking the matter to the school board. The threat strikes at the very heart of the exercise of protected activity, and is evidence of improper motivation. The District will be found to have violated Section 1201(a)(3) of the Act.

COMCLUSIONS

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

1. That the Millersburg Area School District is a public employer within the meaning of Section 301(1) of the Act.

2. That the Millersburg Area Education Association is an employe organization within the meaning of Section 301(3) of the Act.

3. That the Board has jurisdiction over the parties hereto.

4. That the District has committed unfair practices within the meaning of Sections 1201 (a)(1) and (3) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the 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. Cease and desist from discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage membership in any employe organization;

3. Take the following affirmative action that the hearing examiner finds necessary to effectuate the policies of the Act:

(a) Post a copy of this decision and order within five (5) days from the effective date hereof in each District classroom building in a conspicuous place readily accessible to its 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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirty-first day of May, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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	:	
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AFFIDAVIT OF COMPLIANCE

The Millersburg Area School District (District) hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (3) of the Public Employe Relations Act; that it has posted this proposed decision and order as directed and that it has served a copy of this affidavit on the Association.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public