

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

SOUTHERN TIOGA EDUCATION ASSOCIATION, :  
ELIZABETH HAASE AND KATHRYN BARRETT, :  
PSEA/NEA :  
: :  
v. : Case No. PERA-C-07-411-E  
: :  
SOUTHERN TIOGA SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On September 21, 2007, the Southern Tioga Education Association, PSEA/NEA (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Southern Tioga School District (District) alleging that the District violated Section 1201(a)(1), (2), (3), (4), (5), (7) and (9) of the Public Employee Relations Act (PERA).<sup>1</sup>

On October 11, 2007, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was scheduled for hearing on December 7, 2007, in Harrisburg, Pennsylvania. The granting of two unopposed continuance requests resulted in a hearing being held on February 5, 2008, at which time all parties in interest were afforded a full opportunity to present evidence and to cross examine witnesses. Each party filed a post-hearing brief.

The hearing examiner, on the basis of the evidence presented at the hearing, and from all matters of record, makes the following

**FINDINGS OF FACT**

1. Elizabeth Haase has been a teacher in the District for fifteen years. Doris Sargent is the principal at Miller Elementary School, where Haase has taught for the last twelve years. For the 2007-2008 school year, Haase was transferred from teaching sixth grade social studies to teaching second grade. For the 2007-2008 school year, Haase was placed on an "improvement plan." That plan included observations by the principal "at least every two weeks." (N.T. 10, 11, 18, 20, 46, 51).

2. Kathryn Barrett has been at the Miller Elementary School for the last thirteen years. She is a learning support teacher for the second and third grades. (N.T. 23, 24).

3. Doris Sargent has been a principal for fifteen years and at Miller Elementary School since 1974. (N.T. 35, 36).

**DISCUSSION**

The Union alleges that the District violated Section 1201(a)(1) and (3) of PERA when the principal observed two teachers, Barrett and Haase, on multiple occasions in their classrooms, supposedly in retaliation for grievances those two teachers filed the year before. The District parries the charge by arguing that other teachers were observed as often as Barrett and Haase.

The Union also alleges that the principal was "unpleasant, unsmiling" and "refused to speak...or respond...in any way," and that she displayed an "attitude and demeanor of unfriendliness, unresponsiveness, and intimidation...." The District counters that the principal has treated these two teachers no differently than she treats any other teachers. Because the Union has not shown that the District discriminated against Barrett and Haase, this charge is dismissed.

Specifically, the Union asserts in its charge that the principal observed Barrett on two occasions in September of 2007, and Haase on four occasions in August and September of

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<sup>1</sup> At the hearing, the Union's counsel agreed to withdraw all but the alleged violation of Section 1201(a)(1) and (3) of PERA. (N.T. 5).

2007.<sup>2</sup> These observations supposedly took place solely because the teachers filed grievances in 2006, over the principal's handling of two incidents.

There is uncontroverted testimony on the record, however, that the principal had observed some other teachers with the same frequency as Barrett and Haase were observed. (N.T. 47, 48, 49). Even if the Union had proved that the principal observed Barrett and Haase more frequently than other teachers, there is simply no evidentiary nexus connecting those increased observations to the prior year's grievances.

The Union also alleges that the principle's "attitude and demeanor of unfriendliness" are further proof of her "retaliatory conduct." While the principal might not be as gregarious as Barrett and Haase might wish her to be, there is no evidence that her perceived standoffishness is in any way related to the prior year's grievances.

The real problem is the Union's attempt to rely on the pled facts of a prior unfair practice charge that ended in a no-fault settlement agreement.<sup>3</sup> That charge recited a litany of allegations against this principal by Barrett and Haase. Nevertheless, unproved allegations remain just that - unproved allegations. Moreover, the allegations in that past unfair practice charge were *settled*. The Union did not charge a violation of the settlement agreement in that prior unfair practice charge, but rather filed a new charge. And, the proofs of that new charge fell short of being legally sufficient to prove a violation of PERA.

Assertions about whether the principal was "unfriendly" or "unsmiling" or "unpleasant" or "unresponsive," are so conclusory and subjective as to be of little use in revealing any motive. Even if the principal were the Xanthippe the Union argues her to be, it is her motive that matters in a Section 1201(a)(3) charge. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981).

Under Board law, to successfully prosecute a violation of Section 1201(a)(3) of PERA, the Union must show that the employees in question participated in protected activity, that the employer was aware of that protected activity, and that but for that protected activity the adverse action would not have been taken against the employees. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

It is the tertiary element of the test that often presents the most problems of proof, and that is true here. There is no doubt that these two teachers engaged in protected activities and that the District was well aware of those activities. The rub for the Union is that it hasn't shown that the increased observations, if in fact they were increased, are in any way connected to the grievances filed a year before. Absent that singularly necessary element of proof, the charge fails.

#### CONCLUSION

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The District has not committed unfair practices within the meaning of Section 1201(a)(1) and (3) of PERA.

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<sup>2</sup> The record, however, is devoid of the exact dates and number of observations Sargent actually made of Haase and Barrett from the start of the 2007-2008 school year to the date this charge was filed.

<sup>3</sup> Southern Tioga Education Association, Elizabeth Haase, et al v. Southern Tioga School District, PERA-C-07-37-E, Consent Order, issued August 2, 2007.

**ORDER**

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

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixth day of August, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, HEARING EXAMINER