

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SUSQUENITA EDUCATION :
ASSOCIATION, PSEA/NEA :
:
v. : Case No. PERA-C-08-72-E
:
SUSQUENITA SCHOOL DISTRICT :

FINAL ORDER

The Susquenita Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 1, 2009, to a Proposed Decision and Order (PDO) issued on May 12, 2009. In the PDO, the Board Hearing Examiner dismissed the Association's Charge of Unfair Practices in which the Association alleged that the Susquenita School District (District) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA) by reassigning Linda Hagenbuch, a high school Earth/Space Science and Algebra teacher, to a substitute teacher position. The District timely filed a response to the exceptions and a supporting brief on June 22, 2009. The Hearing Examiner's Findings of Fact are, for the most part, undisputed and are summarized as follows.

In 2007, the District was awarded a grant to participate in Classrooms for the Future (CFF), a Pennsylvania Department of Education pilot program that provided high school core subject teachers and classrooms with technology that consisted of laptop computers for students, as well as digital video projectors and white boards. The core subjects for the CFF included math, science, communication arts, social studies and special education. On November 7, 2007, Mark Maldet, District Director of Curriculum and Instruction, and Dr. Michael Jones, High School Principal, conducted an after-school meeting with high school core subject teachers, including Mrs. Hagenbuch, to review the CFF program. One of the conditions of the CFF grant required each core subject teacher to complete either a thirty-hour training program or a masters program offered by Wilkes University. Mr. Maldet and Dr. Jones distributed a CFF participation form to be signed and returned by the teachers acknowledging the requirements of the program. Mr. Maldet and Dr. Jones advised teachers that they could use up to two "trade days"¹ in the 2008-2009 school year for meeting the training requirements of the CFF.

Following the November 7, 2007 meeting, Mrs. Hagenbuch approached Dr. Jones, her principal, to express her concern that since she was retiring in June 2008, she would be unable to take advantage of the incentive of the two trade days in the next school year. She further stated that she would not be able to participate in the CFF training unless she was compensated. Dr. Jones asked her to meet with him later to discuss the matter.

Mrs. Hagenbuch met with Dr. Jones and Mr. Maldet on November 20, 2007. Mrs. Hagenbuch explained that she wanted the same benefit of trade days that would be given to teachers next year, but that she would not receive because of her retirement. Mr. Maldet made it clear that there would be no compensation for the CFF training because the grant did not provide for that expense. Dr. Jones stressed that if she did not reconsider her objection to participating in CFF training there was a strong possibility of her being reassigned. After the meeting, Dr. Jones sent a letter to Mrs. Hagenbuch summarizing what had occurred in the meeting. The letter concluded by stating,

I explained that it is important for you to understand, given the nature of the grant, the opportunities for our students, and given your position in not participating in the necessary training, there is a strong possibility that you would need to be reassigned. You stated you understood.

In response to the November 20 letter, Mrs. Hagenbuch wrote to Dr. Jones repeating her request for compensation for the CFF training, and expressing surprise about Dr.

¹ "Trade days" allowed teachers to take a day off instead of attending in-service training. The "trade days" concept had been established two years earlier after an agreement was reached with the Association.

Jones' statement in the letter that she could be reassigned for failing to agree to the CFF training. In her November 27, 2007 letter, Mrs. Hagenbuch asked for another meeting.

On November 28, 2007, another meeting was held with Mrs. Hagenbuch, Dr. Jones, Mr. Maldet, and Claudio Valeri, the Association building representative. Mrs. Hagenbuch repeated her concerns regarding compensation. Although the District suggested that Mrs. Hagenbuch could complete the training during her planning or preparation periods, Mrs. Hagenbuch thought it was unfair that she would not be able to receive "trade days" as the other teachers, and she also would not be compensated for having to use contractually provided planning or preparation periods to participate in the CFF training. The meeting ended with Mrs. Hagenbuch agreeing to sign the CFF participation form only after taking it home to add her written objections.

On November 29, 2007, Mrs. Hagenbuch returned the CFF participation form to the District. However, rather than simply signing the form, she crossed out the word "must complete" and added language saying that she "will work toward completing" the training. In addition, she wrote on the form that she was signing the letter under protest over the District's refusal to provide her compensation. In response to Mrs. Hagenbuch's amended form, Dr. Jones wrote to Mrs. Hagenbuch that since she was not willing to complete the required thirty (30) hours of CFF training, he was recommending to the Superintendent and the School Board that she be reassigned effective January 2, 2008. The District reassigned Mrs. Hagenbuch to a substitute position on January 2, 2008. She remained at the maximum step on the salary scale and continued to be entitled to all fringe benefits under the collective bargaining agreement, until her retirement on June 11, 2008.

The Hearing Examiner credited the testimony of Dr. Jones and Mr. Maldet, and accepted, as fact, that during the November 20, 2007 meeting they advised Mrs. Hagenbuch that she may be reassigned for refusing to participate in the CFF training. The Hearing Examiner determined that Mrs. Hagenbuch engaged in an activity protected under PERA when she sought the assistance of the Association for her November 28, 2007 meeting with the District. However, the Hearing Examiner found that after the November 28, 2007 meeting, the District merely followed through with its stated intent on November 20, 2007 to reassign Mrs. Hagenbuch if she refused to participate in the required CFF training. Therefore, the Hearing Examiner concluded that the Association failed to establish that the District's reassignment of Mrs. Hagenbuch was because of her protected activity in violation of Section 1201(a)(3) of PERA. The Hearing Examiner also concluded that because the District's reassignment of Mrs. Hagenbuch was due to her refusal to participate in the required CFF training, there was no basis for a finding of interference with, or coercion of, protected activities in violation of Section 1201(a)(1).

The Association argues in its exceptions that the Hearing Examiner erred in finding that Mrs. Hagenbuch did not engage in protected activity until she sought the assistance of the Association on November 28, 2007. The Association posits that because Mrs. Hagenbuch was engaged in protected activity when she sought compensation for the required CFF training during the November 20, 2007 meeting, the District's threat to reassign her, and her reassignment as a substitute teacher, violated PERA. The Association also excepts to the Hearing Examiner's finding that Mrs. Hagenbuch was advised at the November 20, 2007 meeting that she may be reassigned if she declined to complete the CFF training.

To support a claim of discrimination under Section 1201(a)(3) of PERA, the charging party must establish that the employe engaged in an activity protected by PERA; that the employer was aware of that activity; and that the employer took adverse action against the employe because of anti-union reasons. St. Joseph's Hospital v. Pennsylvania Labor Relations Board, 473 Pa. 101, 373 A.2d 1069 (1977). Because motive creates the offense under Section 1201(a)(3) of PERA, PLRB v. Ficon, 434 Pa. 383, 254 A.2d 3 (1969), an employer may successfully defeat a claim of discrimination by establishing a credible, non-discriminatory, legitimate business reason for its action. Wattsburg Education Association v. Wattsburg Area School District, 35 PPER 54 (Final Order, 2004). The credibility to be afforded the witnesses' testimony and to the employer's asserted reason for its action is a matter for the Hearing Examiner, who was able to view the manner and demeanor of the witnesses during their testimony. Absent compelling circumstances, the

Hearing Examiner's findings as to witness credibility will not be disturbed by the Board on exceptions. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). After review of the record, we find no compelling reason to set aside the Hearing Examiner's finding based on the testimony of the District that Mrs. Hagenbuch was advised at the November 20, 2007 meeting that she may be reassigned if she did not participate in the required CFF training.

The Association claims that Mrs. Hagenbuch was engaged in protected activity when she refused to perform the CFF training without compensation. The Board has recognized that an employee engages in protected concerted activity within the meaning of Article IV of PERA by asserting rights under a collective bargaining agreement. Pennsylvania Social Services Union, Local 668 v. Department of Public Welfare (Somerset State Hospital), 27 PPER ¶27086 (Final Order, 1996). An employee's complaint that may lead to the filing of a grievance is concerted activity regardless of whether the employee's understanding of the contract is correct. Id. Arguably, Mrs. Hagenbuch's claims did raise potential issues under the collective bargaining agreement regarding the length of the work day, use of planning periods and compensation, and could have been the basis for the filing of a grievance. However, regardless of whether Mrs. Hagenbuch was engaged in protected activity on November 7, November 20 or November 28, 2007, the Association failed to establish that it was Mrs. Hagenbuch's protected activity that motivated the District to reassign her to a substitute teaching position.

Generally, under Section 702 of PERA, an employer has the managerial right to assign additional tasks or duties to be performed by bargaining unit employees. Bangor Area Education Association v. Bangor Area School District, 33 PPER ¶33088 (Final Order, 2002). Likewise, the employer may rightfully expect that employees will comply with its lawful directives. As the Board has noted, "no policy of PERA would be served if the acts of insubordination were sheltered under the protection of the right of employees to engage in lawful union activity." Pittston Area Federation of Teachers, Local 1590 v. Pittston Area School District, 27 PPER ¶27066 at 145 (Final Order, 1996).

Here, the CFF grant required that all teachers of core subjects participate in the CFF training, and therefore, the District assigned the CFF training to all teachers of core subjects. As repeatedly evidenced in the record, Mrs. Hagenbuch simply refused to comply with that directive. Concerned that it could lose funding for technology advancements that consisted of laptop computers for students as well as digital video projectors and white boards because of Mrs. Hagenbuch's refusal to complete the CFF training, the District believed that it had no other choice but to remove Mrs. Hagenbuch from teaching a core subject. Indeed, as credited by the Hearing Examiner, "the District reassigned Mrs. Hagenbuch to a substitute position because she would not agree to follow a District directive that she participate in training unless she was reimbursed in some way..." (PDO at 5).

Even if Mrs. Hagenbuch was engaged in protected activity on November 20, 2007, as argued by the Association, clearly, on this record, it was not Mrs. Hagenbuch's assertion of perceived entitlement to contractual compensation, but her refusal to participate in the CFF training that motivated the District's reassignment of her to a substitute teaching position. Nothing in the record establishes, or even suggests, that the District reassigned Mrs. Hagenbuch because she asserted an alleged contractual right to compensation. Indeed, had Mrs. Hagenbuch participated in the CFF training, she would have been able to engage in the protected activity of grieving her concerns over compensation. Accordingly, the Association failed to establish that in reassigning Mrs. Hagenbuch, the District harbored an unlawful anti-union motive in violation of Section 1201(a)(3) of PERA.

The Association also argues that the Hearing Examiner erred in failing to find an independent violation of Section 1201(a)(1) for the District's alleged act of interfering, restraining or coercing Mrs. Hagenbuch in asserting her protected rights. An independent violation of Section 1201(a)(1) of PERA arises when, in light of the totality of circumstances, the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights. Fink v. Clarion County, 32 PPER ¶32165 (Final Order, 2001).

As noted above, generally an employe may not disregard an employer's directives, even when they may be perceived to be in violation of the contract. Pittston Area School District, supra. An exception to this rule is when the employer's directive is itself restrictive or coercive of the exercise of employe rights under Article IV. For example, in Teamsters Local No. 249 v. Millvale Borough, 36 PPER 147 (Final Order 2005), the Board determined that the employer's discipline of an employe who violated a chain-of-command rule was an unfair practice because it interfered with the employe's right to seek assistance from a co-worker and outside sources over a working condition issue. Similarly, in Somerset State Hospital, supra, the Board concluded that the employer violated Section 1201(a)(1) by directing an employe to cease and desist from asserting his contractual right to a safe working environment.

However, upon review of the record, this is not an instance where the District's directive that teachers participate in the CFF training interfered with or coerced employes in the exercise of protected rights. Nowhere in the record is there any indication that the District directed Mrs. Hagenbuch, or the Association, to cease and desist from asserting her perceived right to compensation for the CFF training. The Association claims that Mrs. Hagenbuch's reassignment precluded the filing of a grievance. Yet as noted above, had Mrs. Hagenbuch participated in the CFF training, she would have been able to engage in the protected activity of grieving her concerns over compensation, or any other issue regarding the CFF training which may have arisen.

The District advised teachers, including Mrs. Hagenbuch, that in accordance with the CFF grant, the CFF training was a necessary requirement to continue teaching a core subject. On this record, no reasonable employe would feel coerced, intimidated, or threatened by the District's reassignment of a teacher who previously taught a core subject when the teacher has refused to complete the necessary training. Pittston Area School District, supra; Wattsburg Area School District, supra. Accordingly, the Hearing Examiner did not err in dismissing the Association's claims of an independent violation under Section 1201(a)(1) of PERA.

After a thorough review of the exceptions and all matters of record, we agree with the Hearing Examiner's determination that the District has not violated Section 1201(a)(1) or (3) of PERA. Accordingly, the Association's exceptions shall be dismissed and the PDO made absolute and final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Susquenita Education Association are hereby dismissed, and the May 12, 2009 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, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of July, 2009. 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.