COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WYOMING AREA EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION	:	
v.	:	Case No. PERA-C-08-184-E
WYOMING AREA SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On May 16, 2008, the Wyoming Area Educational Support Personnel Association (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Wyoming Area School District (District) alleging that the District violated Sections 1201(a)(1), (3) and (4) of the Public Employe Relations Act (PERA).

On June 19, 2008, 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 resolving the matters in dispute through the mutual agreement of the parties and September 9, 2008, in Wilkes-Barre was scheduled as the time and place of hearing if necessary.

A hearing was necessary but was held on November 13, 2008. A second day of hearing was held on January 15, 2009. At the hearings 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 the Wyoming Area School District (District) is a public employer within the meaning of Section 301(1) of the Act. (N.T. 13-14)

2. That the Wyoming Area Educational Support Personnel Association (Association) is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 13-14)

3. That the Association is the exclusive representative of the District’s nonprofessional employes, including custodians and maintenance employes. (N.T. 13-14)

4. That until 2008, William Simmons was a non-professional employee of the district and began his employment in approximately 1995. He began his employment as a part time janitor and worked up to a full time janitor. He ultimately was promoted to maintenance foreman. (N.T. 95-96)

5. Mr. Simmons became President of the Wyoming Area Educational Support Personnel Association, ESPA/PSEA/NEA in approximately 2000. He was also grievance chair for the Association. By the District's count, he filed at least 30 grievances during this period. (N.T. 96)

6. That Mr. Simmons was the Association President when the Association filed a charge of unfair practices against the District on June 5, 2006. The charge alleged that the District violated its duty to bargain with the Association by unilaterally transferring bargaining unit work. Simmons was a witness in the PLRB hearing that was held on October 29, 2007. On July 22, 2008, this hearing examiner issued a proposed decision and order finding that the District committed an unfair practice in violation of Sections 1201(a)(1) and (5) of PERA. (PERA-C-06-247-E)

7. Patrick Pribula is the former Assistant Superintendent for Buildings and Grounds. He held the position from 1990 to 1997 and again from 2003 to 2006. He supervised Mr. Simmons. He testified that Mr. Simmons was an advocate on behalf of support staff members' grievances brought under the parties' collective bargaining agreement. (N.T. 30-31)

8. That Raymond Bernardi is the District Superintendent. He has held this position since April, 2001. He dealt with Mr. Simmons over grievances filed by the Association. Superintendent Bernardi knew of Mr. Simmons' Association activities. (N.T. 97, 205, 208)

9 That in 2002, Superintendent Bernardi wrote up Mr. Simmons for inappropriate physical contact with another employe after a horseplay incident. Mr. Simmons grieved the written warning to the level of the school board. At that level the board instructed the superintendent to remove the written warning from Mr. Simmons' personnel file. (N.T. 218-219, District Exhibit 2)

10. That in the fall of 2007, an incident between Mr. Simmons and Mr. Bernardi arose concerning Steven Chipolis who was being employed by the District to do maintenance work. Mr. Chipolis was not in the bargaining unit. Mr. Simmons contended that this was a diversion of bargaining unit work and brought this to the attention of the administration. In response to this, Mr. Chipolis was informed by the administration not to do any maintenance work. Thereafter, Mr. Simmons started to receive twice the amount of work that was normal and his work was being assigned to him by Superintendent Bernardi. (N.T. 98-99)

11. Mr. Simmons testified that it was not the practice within the district to receive work assignments directly from Superintendent Bernardi. The past practice had been to receive his work assignments either from Mr. Pribula or Carl Yorina, the facilities manager. These employes are no longer employed by the district. It was also the practice to receive work orders from the principals. (N.T. 99-100)

12. Mr. Simmons testified that following the Chipolis incident that he was assigned job duties by Superintendent Bernardi. These job duties included, but were not limited to having to spread fifteen tons of mulch on a children’s playground in the rain during the month of November, 2007; being directed to remove a four hundred pound plate glass window; and installing basketball poles and banking boards in a school yard without assistance. Mr. Simmons believed these job assignments caused him to become ill. (N.T. 101-102)

13. Patrick J. Pribula, a former employee of the district who had been Superintendent of Building and Grounds, testified on behalf of Mr. Simmons. Mr. Pribula testified that jobs that Mr. Simmons was directed to perform by Superintendent Bernard were not appropriate and not done in that fashion when he was employed by the district. (N.T. 26-27)

14. John Holland, a Regional field Director for the Pennsylvania State Education Association (PSEA), testified on behalf of Mr. Simmons. He indicated that the relations between Mr. Simmons and Superintendent Bernardi was often hostile. He witnessed Superintendent Bernardi would make demeaning remarks towards Mr. Simmons. (N.T. 43-46)

15. Mr. Simmons requested a meeting with Mr. Bernardi to discuss these job assignments. Mr. Simmons informed Superintendent Bernardi that he was getting progressively sick from working out in the cold. (N.T. 107)

16. The Grievant’s health condition deteriorated and he developed bronchitis. As a result of this, and his worsening relationship with Mr. Bernardi, on November 30, 2007 the Grievant submitted his resignation, in a letter addressed to the School Board, handed to Vito Quaglia, the high school principal. He turned in his keys and identification badge to Mr. Quaglia. (N.T. 108, Association Exhibit 1)

17. That in 2008, Mr. Simmons was 59 years of age. (N.T. 108, Association Exhibit 1)

18. That six days after handing in his resignation letter, Mr. Simmons recovered his health and decided he had made a mistake in resigning his position with the district and contacted his PSEA Union Representative, John Holland. With the assistance of Mr. Holland, he drafted a letter rescinding his letter of resignation. Mr. Holland delivered it in person to Mr. Bernardi's office on December 6, 2007. (N.T. 48, 94, Association Exhibit 2)

19. The letter rescinding the resignation stated in pertinent parts as follows:

> "Effective immediately, I am available to resume all the duties and responsibilities of my position as a maintenance foreman. I shall await your response. Please advise."

(N.T. 48, 94, Association Exhibit 2)

20. That Mr. Bernardi never responded to Mr. Simmons' letter. (N.T. 215-217)

21. Mr. Simmons testified that he did not simply return to work because he had no identification swipe card and no keys. He further testified that he was apprehensive due to a situation in the past involving Robert Micheletti, an assistant superintendent who wanted to return to work after he resigned and was met with an armed security guard preventing his return. He believed that if he were to return to the district without the permission Superintendent Beranrdi as well as his identification and keys, there would be a "problem." (N.T. 17, 171, 237-238)

22. Mr. Simmons testified that after December 6, 2007 he was relying on his employe representative, Mr. Holland, to intercede with the District to facilitate his return to work. This testimony is corroborated by that of John Holland. (N.T. 110-111)

23. Mr. Holland informed Mr. Simmons that he could not just show up at the School District, that he needed his proper identification and keys, and that it was necessary to wait for Mr. Bernardi to tell him when he should return to work. (N.T. 88)

24. Mr. Holland testified that he hand delivered the letter rescinding Mr. Simmon's resignation to Superintendent Bernardi's office. At that point in time, the Board of School Directors had not accepted the resignation of Mr. Simmons. (N.T. 42-48, 53, Association Exhibit 2)

25. Mr. Holland wrote a letter to Superintendent Bernardi dated December 21, 2007, again inquiring when and how Mr. Simmons should return to work. (N.T. 53, 94, Association Exhibit 3)

26. Mr. Bernardi testified that he would have permitted Mr. Simmons to return to work the following day. Mr. Bernard testified:

> "Of course. We were strapped. We didn't have – we had no facilities manager. We were advertising for a new one. Bill was our go-to-guy. He was our maintenance foreman. We were strapped."

(N.T. 233)

27. On December 21, 2007, Superintendent Bernardi wrote the following letter to Mr. Simmons and Mr. Holland:

> This letter is in response to the **Grievance** you hand delivered to my Secretary on December 6, 2007 along with the **accompanying letter** singed by Mr. Simmons **rescinding his letter of resignation**. It is the District's position that it took **no action** to constructively terminate Mr. Simmons from his job. Mr. Simmons **resigned on November 30, 2007** and withdrew his resignation December 6, 2007 and **simultaneously filed a Grievance seeking the return of his job**. Mr. Simmons walked off the job of his own volition and the District took **no action to terminate him** or **prevent him from returning.**
>
> At this point, it is the **District's position** that Mr. Simmons is **insubordinate** and **absent without justification** and the District will undertake the appropriate **disciplinary procedures** regarding the same.
>
> (Emphasis in original.)

The letter was copied to Nick DeAngelo, Board President and Attorney Ray Hasay, Board Solicitor. (N.T. 53, 94, Association Exhibit 4)

28. On December 21, 2007, Secondary Principal Vito Quaglia wrote the following letter to Mr. Simmons:

> The purpose of this letter is to place you on **notice of disciplinary action** being taken against you for **insubordination and dereliction of duty**. Your **failure to call the DISC System to report off for work,** the **inflammatory statements and allegations** you made regarding the **Superintendent of Schools** constitute the basis for **disciplinary action**. You are hereby notified that **effective the date of this letter**, you are suspended without pay. Further, a **due process** Proceeding has been scheduled for Friday, January 4, 2008, at 2:30 P.M. in my office, at which time you will have the opportunity to dispute the charges against you and make your case to the Superintendent.
>
> Your **presence is required** and you may be **represented by counsel** or **union representative**.
>
> (Emphasis in original.)

The letter was copied to Attorney Ray Hassey, the school board solicitor and Raymond J. Bernardi, Superintendent. (N.T. 54, Association Exhibit 5)

29. On January 4, 2008, Mr. Holland and Mr. Simmons attended a meeting with Superintendent Bernardi and other school officials as well as the District solicitor. The District solicitor opened the meeting by saying that the purpose of the meeting was "to conduct a Due Process/Loudermill type Hearing for Bill Simmons." Mr. Hassey noted that Simmons received the December 21, 2007 letter from Mr. Quaglia about potential discipline. Mr. Hassey noted that Mr. Simmons was notified on December 21, 2007 by Vito Quaglia, Secondary Center Principal, that potential disciplinary action would be taken against him." He asked John Holland if he had received the letter and Holland indicated he had. Mr. Holland also indicated at this meeting that he again informed the District that Mr. Simmons was ready, willing and able to return to work. He noted that Mr. Simmons did not abandon his position. He repeated that Mr. Simmons had rescinded his resignation. Mr. Holland informed the group that Mr. Simmons was going to waive the Loudermill or Due Process Hearing. (N.T. 82, 94, District Exhibit 4)

30. By letter dated January 24, 2008, Mr. Simmons was informed that a regular meeting of the Board of School Directors on January 22, 2008, his position had been terminated. The letter stated that the basis for that termination was insubordination for making statements about Superintendent Bernardi in his resignation letter as well as his failure to call in and report off sick. (N.T. 58, Association Exhibit 6)

31. Gerald Scott Wall, a school board director, confirmed the primary reason for Mr. Simmons' dismissal was for not correctly reporting off from work. (N.T. 99, 192-193)

DISCUSSION

The Association's charge of unfair practices alleges that the District violated Sections 1201(a)(1), (3) and (4) of PERA by its termination of Association president William Simmons and its refusal to accept Mr. William Simmons' request to rescind an earlier resignation.

The Association, as the complainant, bears the burden of proving the elements of the alleged violations by substantial and legally credible evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A. 2d 1069 (1977). Substantial evidence means evidence that does more than just create a suspicion of the existence of the fact necessary to establish each element of the unfair practice charge. Township of Upper Makefield, 10 PPER ¶ 10299 (Nisi Order of Dismissal, 1979).

The first cause of action to address is the alleged violation of Section 1201(a)(3), that the District terminated Mr. Simmons' employment because of his activities as Association president and grievance chairman. In order to sustain a charge of discrimination under

Section 1201(a)(3) of PERA, the complainants must prove that the employes engaged in protected activity, that the employer was aware of that protected activity, and that 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 complainant must establish these three elements by substantial and legally credible 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 898 (Pa. Cmwlth. 1994).

The complainant proved the first two elements of the St. Joseph's test. First, the complainant proved that Mr. Simmons engaged in protected activity. Mr. Simmons was the local Association president. In this role, he filed many grievances, at least thirty by the District's count. He also was the main witness for the Association in a charge of unfair practices filed with this Board in which this hearing examiner found that the District unilaterally transferred the bargaining unit work of maintenance workers, thereby violating its duty to bargain under Section 1201(a)(5) of PERA.

As for the second element of proving discrimination, the Association proved that the District knew of Mr. Simmons' protected activity. Superintendent Bernardi, in receiving Mr. Simmons' grievances and in witnessing Mr. Simmons testify in the unfair practice hearing, had knowledge of Mr. Simmons' protected activity.

The dispute in this case is over the third element, whether the District was motivated by anti-union animus in terminating Mr. Simmons. 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 the Board and the Commonwealth Court set forth in Perry County, supra, even if the District can show that the school board of directors was not aware of a superintendent's discriminatory motives, the District will be guilty of an unfair practice if the Complainant can prove the Superintendent had discriminatory motivation because motivation of a supervisory employe is imputed to the employer.

In this case, the record does not reveal any outward statements or admissions of anti-union animus by District officials in connection with the termination decision. However, since improper motivation is rarely admitted and since the decision makers who are accused of anti-union motivation do not always reveal their inner-most private mental processes, the Board allows the fact finder to infer anti-union animus from the record as a whole. PLRB v. Montgomery County Geriatric and Rehabilitation Center, 13 PPER ¶ 13242 (Final Order, 1982); St. Joseph's Hospital, supra. But an inference of anti-union animus must be based on substantial evidence consisting of "more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." Shive supra at 313.

In Child Development Council of Centre County (Small World Day Care Center), 9 PPER ¶ 9188 (Final Order, 1978), the Board stated:

> There are a number of factors the Board considers in determining whether anti-union animus was a factor in the layoff of the Complainant: the entire background of the case, including any anti-union activities by the employer; statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge, or layoff, of the adversely affected employe, the effect of the discharge on unionization efforts-for example, whether leading organizers have been eliminated; the extent to which the discharged or laid-off employe engaged in union activities; and whether the action complained of was "inherently destructive" of important employe rights."

9 PPER 9188, at 380.

Later, the Board noted other factors that it would consider to infer anti-union animus, including the timing of the adverse action against the employes. PLRB v. Berks County (Berks Heim County Home), 13 PPER ¶ 13277 (Final Order, 1982).

In this case, the Association argues that animus can be inferred from the three factors: the entire background of the case; the fact that a leader of the Association, who had engaged in extensive grievance filing, has been terminated, and the failure of the District to adequately explain the reason for terminating Mr. Simmons and not accepting his request to rescind his resignation.

The entire background of the case include the contentious relationship between Mr. Bernardi and Mr. Simmons. The relationship between these men included Mr. Simmons seeking the aid of his Association representative to challenge discipline taken against him. Also, the Superintendent directly supervised Mr. Simmons work and handed out onerous work assignments to Mr. Simmons. The District argues that the assignments were not onerous and that Mr. Simmons could have sought assistance. However, Mr. Simmons testimony on this issue was credible. The assignments came shortly after Mr. Simmons questioned Superintendent Bernardi about improper assignments to a non-bargaining unit employe. Former superintendent for buildings and grounds, Patrick Pribula, corroborated Mr. Simmons' testimony that the assignments and the closeness of the supervision by Mr. Bernardi were unusual. Also Mr. Simmons testified in a credible manner that he developed bronchitis after the last work assignment of shoveling mulch in the rain. It was this illness combined with the series of onerous work assignments and a deteriorating relationship with Mr. Bernardi that caused him to decide to resign.

The next factor to infer animus is that the termination of Mr. Simmons had a detrimental effect on the Association status as the exclusive representative of the employes. As president, Mr. Simmons was an active grievance filer. His termination from the District removed a zealous advocate for the Association, which had a detrimental effect on the Association.

The third factor the Association contends can raise the inference of anti-union animus is that the District's explanation for terminating Mr. Simmons and not accepting Mr. Simmons' rescission is not adequate, not credible and a pretext to cover anti-union motivation. In Lehighton Area School District, 682 A.2d 439 (Pa. Cmwlth. 1996), the Board found that the employer discharged the Association shop steward and grievance officer without an adequate explanation of why it based its discharge decision on the employe's improper performance of building checks. The Board found that the employer seized upon the employe's improper building checks as a reason to discharge the employe and that the discharge would not have happened but for the employe's protected activity.

The Association argues that this case is one in which anti-union animus can be inferred from the failure of the District to adequately explain why it terminated Mr. Simmons. The District contends that it terminated Mr. Simmons for abandoning his position and not reporting to work. However, the Association cast considerable doubt on that explanation, pointing out that Mr. Simmons did not abandon his position, but, to the contrary, utilized his Association representative to request information from the Superintendent on how to return to work following his decision to rescind his recently submitted resignation.

The District argues that no such inference should be drawn because it simply handled Mr. Simmons' case as it would any other similarly situated employe. It contends that Mr. Simmons did not report to the District's DISC system for an absence of work and for insubordination to the superintendent. However, a school board member testified that the primary reason for termination was Mr. Simmons not reporting off from work, so this reason will be subjected to analysis.

This District's reason for terminating Mr. Simmons does not withstand close scrutiny. In reality the District Superintendent knew that Mr. Simmons was an employe who had asked for direction on how to return to work following his resignation six days earlier. The District's rationale for termination flies in the face of the Association's efforts to help Mr. Simmons' rescind his resignation. The District superintendent received the rescission letter, but he did nothing to answer it, despite the direct request in the letter for advice on how to return to work. By any commonsense and objective reading of the facts, Mr. Simmons did not abandon his work and did not refuse to report to work. The District used the alleged failure of Mr. Simmons to report to work as a pretext.

The Board held that an employer violated PERA when it fails to accept a rescission of a resignation without credible reason. In Rudy v. Lehigh County, 18 PPER 18229 (Proposed Decision and Order, 1987) 19 PPER ¶ 19071 (Final Order, 1988); aff'd on

reconsideration, 21 PPER ¶ 21093 (Proposed Decision and Order, 1990), 21 PPER ¶ 21169 (Final Order, 1990). The Board found that the failure to accept a rescission of a resignation was part of a pretextual decision and was evidence of anti-union animus.

The District argues that it was the entire School Board, not Superintendent Bernardi, who voted to terminate Mr. Simmons' employment. Therefore, if there was any anti-union animus from Mr. Bernardi, the School District's action was not similarly tainted. However, this argument ignores the fact that at the Loudermill hearing, Mr. Simmons' employe representative again informed the superintendent and the solicitor that the reason Mr. Simmons was not at work was that neither he nor the Association had received an answer from Superintendent Bernardi to Mr. Simmons' rescission of his resignation. The Association representative informed the group that Mr. Simmons would not offer any personal testimony to the Loudermill meeting. The District's Board of Directors' decision, therefore, did not sanitize the process. Rather, the process remained tainted by the District proceeding with the termination machinery in the face of knowledge that Mr. Simmons had rescinded his resignation.

In the present case, it strains credulity to accept the District's assertion that it simply treated Mr. Simmons as any other employe who failed to report to work. Mr Simmons rescinded his resignation just six days after he resigned. With the assistance of his association, he sought direction from the District how to return to work. Yet the District ignored this request and treated his situation as an abandonment of work. When given a chance to offer a credible explanation in this unfair practice hearing of what he did in response to the December 6 rescission letter, Superintendent Bernardi's testimony veered off into a discussion of the conduct of Mr. Simmons' Association representative, John Holland.

There is additional reason for finding a pretext. Mr. Bernardi’s testimony is inconsistent and inexplicable as to why he did not respond to Mr. Simmons' request to rescind his resignation. He testified that Mr. Simmons was their “go-to-guy” and that the school district was strapped and in need of Mr. Simmons’ work efforts. Yet he made no effort whatsoever to either speak with Mr. Simmons or Mr. Holland concerning the protocol for returning to work. If in fact Mr. Bernardi’s testimony was truthful that Mr. Simmons was their “go-to-guy” then it seems incredible that he would not have called either Mr. Simmons or Mr. Holland in response to the request to return to work. Instead, he proceeded to send Mr. Simmons case to the Board as if Mr. Simmons simply walked away from the job.

This failure to present a credible explanation for the termination is another factor to infer that the decision was motivated by anti-union animus. Having proven all three elements of the St. Joseph's Hospital test for a Section 1201(a)(3) charge, the District will be found to have violated this section of PERA.

The Association has also alleged that the District violated Section 1201(a)(4) of PERA, which prohibits a public employer from "discharging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act." 43 P.S. 1101.1201(a)(4). The elements necessary to establish a Section 1201(a)(4) violation are subsumed by the elements of Section 1201(a)(3). Teamsters Local #429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000).

Under the same analysis for the same reasons as stated in the discussion of the Section 1201(a)(3) allegation, the District will be found to have violated Section 1201(a)(4) for its termination of Mr. Simmons. Mr. Simmons gave testimony on behalf of the Association in the unfair practice charge filed at PERA-C-06-247-E. It can be inferred that the District's failure to provide a plausible explanation for terminating Mr. Simmons and not accepting his rescission of his resignation was caused by his testimony in support of the unfair practice charge filed at PERA-C-06-247-E.

Finally, the Association has also charged the District with violating Section 1201(a)(1) of PERA, which prohibits public employers from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act." 43 P.S. 1101.1201(a)(1). An independent violation of Section 1201(a)(1) of PERA occurs, "where in light of the totality of the circumstances the employer's actions have a

tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Under this standard, the complainant does not have to show improper motive or that any employes have in fact been coerced. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order, 2004).

By that standard, reviewing the totality of the particular circumstances of the case, the decision to terminate Mr. Simmons was coercive. The Board of School Directors allowed the Superintendent to create the appearance of an employe abandoning his work position. The Superintendent showed a disregard for Mr. Simmons' use of legally protected employe representation procedures authorized in PERA. The superintendent knew that Mr. Simmons felt he was stressed from what Mr. Simmons saw as mistreatment, knew that he had resigned over that alleged maltreatment, knew that he had rescinded his resignation and knew that he had that he had sought the assistance of a PSEA Uniserve representative to deal with the Superintendent on how to return to work. Despite all of this knowledge, the Superintendent still chose to send Mr. Simmons' case to the school board for its decision on his fate. This treatment of an employe violates Section 1201(a)(1) of PERA.

CONCLUSIONS

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

1. That the District is a public employer within the meaning of Section 301(1) of PERA.

2. That the Association is an employe organization within the meaning of Section 301(3) of PERA.

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

4. That the District has committed unfair practices in violation of Section 1201(a)(1),(3) and (4) of PERA..

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 with restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from discriminating against employes to encourage or discourage membership in an employe organization.

3. Cease and desist from discriminating against employes for signing or filing an affidavit, petition or complaint or given testimony under PERA.

4. Take the following affirmative action:

(a) Offer unconditional reinstatement to William Simmons to his former position without prejudice to any right or privilege enjoyed by him and pay him a sum equal to the amount he would have earned as wages had he been retained as an employe, along with interest.

(b) The back pay shall be computed on the basis of each separate calendar quarter or portion thereof drig he period from the date Mr. Simmons was terminated to the poit of the proper ofer of resinstatement. The quarterly period shall begin the first day of January, April, July and October. Loss of pay shall be determined

by deducting from a sum equal to that which the officers would normally have earned each quarter or portion thereof, their net earnings actually earned or which would have been earned with the exercise of due diligence during that period, earnings which would have been lost through sickness and any unemployment compensation received by Mr. Simmons. Earnings in one particular quarter shall have not effect on the back pay liability for any other quarter.

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days.

(d) 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; and

(e) Serve a copy of the attached affidavit of compliance upon the Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this third day of August, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner