

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PITTSBURGH FEDERATION OF TEACHERS, :
LOCAL 400 :
 : CASE NO. PERA-C-19-197-W
 v. :
 :
 PITTSBURGH BOARD OF EDUCATION :
 :

PROPOSED DECISION AND ORDER

On September 9, 2019, Pittsburgh Federation of Teachers, Local 400 (PFT or Federation) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Pittsburgh Board of Public Education (Employer) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (PERA or Act).

On September 26, 2019, the Secretary of the Board issued a complaint and notice of hearing designating December 23, 2019, in Pittsburgh, as the time and place of hearing.

The hearing was continued and held on February 4, 2020, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Federation filed its post-hearing brief on June 2, 2020. The Employer filed its post-hearing brief on July 14, 2020.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The Employer is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7).

2. The Federation is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7).

3. On January 24, 2018, the Federation filed a grievance on behalf of Livia Young over an issue concerning a class that had been assigned to Young immediately prior to the beginning of the second semester in January, 2018. The issue advanced to the stage of an arbitration hearing, but, prior to the hearing, the Employer granted the grievance in favor of Young. (N.T. 21-22; Federation Exhibits 1, 2).

4. Livia Young has been employed by the Employer since 2013. She was first hired as a math teacher at University Prep (U-Prep). U-Prep is a high school. She was elected as Building Rep in 2017. She served previously as an ITL, or Instructional Team Leader. She became a math coach in 2019. As math coach, she was also assigned to U-Prep. As math coach, she spends her time coaching other teachers rather than

teaching classes. Math coach is a bargaining unit position. (N.T. 46-49, 75).

5. For most of the 2018-2019 school year, Dr. Hill was the principal at U-Prep. In April of 2019, Dr. Hill was injured at work and went on medical leave. Dr. Shemeca Crenshaw then came to U-Prep in April of 2019. Young first met Crenshaw on April 30, 2019, at a meeting. (N.T. 51-57).

6. On May 30, 2019, a teacher at U-Prep, Ms. Whelan, reached out to Young and told Young that she felt that she was being called to an investigatory meeting and that she, Whelan, wanted Young to accompany her as her union representation. There was an announcement made over the public address system for Whelan to go to the main office and Young went with her. After the public address system call for Whelan, there was another call for Mr. Yakicic, the alternate Building Rep. When Young showed up to the main office, she told Crenshaw that she, Young, was the union representation requested by Whelan. Crenshaw said that Young could stay as moral support, but that Young was not the Building Rep and that the meeting would not start until Yakicic arrived. The meeting did not start until Yakicic arrived and at that point Crenshaw told Young and Yakicic that they were not allowed to speak. (N.T. 24, 58-60).

7. Later that day, on May 30, 2019, Young found out that Mr. Harlacher, a teacher at U-Prep, had been asked by the administration to attend an investigatory meeting. Harlacher told Young about it after it was over. Young did not attend the meeting as a building rep but Yakicic did. (N.T. 60-61).

8. On May 30, 2019, William Hileman, the Union Representative, after learning of the meeting from Young and Whelan, wrote an email to Crenshaw. In this email, Hileman stated in relevant part:

Ms. Livia Young is the elected Main PFT Building Representative at University Prep.

Mr. Daniel Yakicic is an elected PFT Building Representative.

Ms. Young was a classroom teacher at U-Prep for several years and recently became an academic coach, currently entirely at U-Prep.

When the time comes that Ms. Young is not the Main PFT Building Representative at U-Prep, the PFT will let the school's administration know.

It is not the administration's place to identify which employee is the PFT Building Rep, or which PFT Representative attends an investigatory meeting.

A PFT-represented employee who is called into an investigatory meeting has a right to a union representative AND has a right to select who,

among the PFT members in the building will represent her.

A PFT Representative at an investigatory meeting is allowed to speak. The Representative can ask what the meeting is about, can ask clarifying questions, can add information or make a statement after the employee has been questioned. The representative cannot interfere with the investigation as long as the questioning is not badgering the employee.

At an investigatory meeting today, the U-Prep teacher and two union reps, you stated that Ms. Young was not a union rep and that Mr. Yakicic was, even though the teacher stated she wanted Ms. Young to be there. Both representatives attended the meeting. You stated that Ms. Young was only there for support and not as a representative. You stated that the two PFT Building Representatives could not speak.

Today was not the first time you displayed a dismissive and disrespectful posture towards Ms. Young.

Because Ms. Young is a human being, a professional employee of the School District, a PFT Building Representative, and a PFT Executive Board member, she is deserving of your respect.

Because *NLRB v. J. Weingarten, Inc.* [420 U.S. 251 (1975)] is the law, we all need to abide by it.

Retaliation is illegal.

(N.T. 25; Federation Exhibit 4).

9. On May 30, 2019, Crenshaw responded to Hileman with an email that stated in relevant part:

Greetings,

Thank you for the information. While I vehemently disagree with the account of the information [in your email], I will continue to adhere to the law. Individuals are not allowed to speak on behalf of an employee.

(N.T. 25; Federation Exhibit 5).

10. On July 10, Crenshaw sent Jamie Griffin, Executive Director of K-12 Mathematics, Science and STEM, an email which states in relevant part:

Greetings,

Human Resources informed me that Livia Young would be the U-Prep Math Coach. I respectfully request another math coach.

Many situations occurred in which Ms. Young focused on union activity or math [Instructional Team Leader] duties rather than math support for her colleagues. . . .

Additionally, I question her effectiveness to move achievement based on her previous scores. All observed interactions were focused on adherence to the CBA, [Instructional Team Leader] duties, completion of the SIP, scheduling and not supporting students instructionally. . . .

(Federation Exhibit 6).

11. On July 29, 2019, Young attended a District meeting for math coaches lead by Griffin, a member of District administration. At this meeting Young learned that she was being moved from U-Prep effective for the 2019-2020 school year. Griffin told Young that the reason she was being moved was because Crenshaw had sent an email requesting that Young no longer be placed at U-Prep. (N.T. 61-63).

12. Young is currently working at Bashear and Obama, a District school. She does not want to return to U-Prep. (N.T. 68).

DISCUSSION

Section 1201(a) (3) of PERA prohibits public employers from "[d]iscriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization." 43 P.S. § 1101.1201(a) (3). The Federation, as the party asserting an unfair practice, bears the burden of proving the Employer violated this subsection. Perry County v. PLRB, 634 A.2d 808, 810-11 (Pa. Cmwlth. 1993). To prove an unfair practice, the Federation must show, "by a preponderance of the evidence, that: (1) the employee was engaged in protected activity; (2) the employer knew of the activity; and (3) the employer was motivated by an unlawful motive or anti-union animus in taking adverse action against the employee." Lancaster Cty. v. PLRB, 633 Pa. 294, 322 (2015). If Union establishes a prima facie case, "the burden then shifts to the employer to establish, by a preponderance of the evidence, that the employee would have been discharged even in the absence of ... union activities." Lehighton Area Sch. Dist. v. PLRB, 682 A.2d 439, 443 (Pa. Cmwlth. 1996).

In this case the record is clear the Young was engaged in protected activity before July 10, 2019, which is the date Crenshaw requested that Young be transferred. Young had participated in grievances and meetings as a union representative. The record is also clear that the Employer knew of her union activity. The record is also completely clear that Crenshaw was motivated by anti-union animus when

she requested that Young be transferred. No inference of anti-union animus from the record is required. Crenshaw's email on July 10, 2019, explicitly states that Crenshaw wanted to transfer Young because "Young focused on union activity . . . rather than math support for her colleagues. . . ." and that Crenshaw observed Young to be "focused on adherence to the CBA". Thus, the Federation has met its *prima facie* burden.

The burden shifts to the employer to establish, by a preponderance of the evidence, that the decision to transfer Young would have occurred absent Young's protected activity. Teamsters Local 776 v. Perry County, 23 PPER ¶ 23201 (Final Order, 1992); Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 (Final Order, 1992). The Employer in its Brief argues the following:

Even assuming, arguendo, that Crenshaw's July 10, 2019 email (PFT Exhibit 6) is a sufficient basis for PFT to establish a *prima facie* case of discrimination, PFT's claim should nonetheless fail because Crenshaw explained she would have taken the same action (i.e., requesting that Young be transferred) in the absence of Young's protected activity. Crenshaw testified that her motivation in requesting that Young be transferred was simply that she (Crenshaw) felt Young was not adequately doing her (Young's) job as a Math Coach. Crenshaw believed Young was not devoting sufficient time and effort to Young's coaching duties, but instead was devoting her (Young's) time elsewhere. . . .

While Crenshaw may have been clumsy in the manner in which she advocated for Young's transfer, her explanation regarding motive is credible and should be excepted by the Hearing Examiner as sufficient to establish that the Board (through Crenshaw) would have taken similar action, even in the absence of Young's protected activity.

(Employer's Brief at 7-8).

The Employer's argument fails because I do not find Crenshaw's testimony to be credible. Importantly, on Direct, Crenshaw testified as follows:

Q. So did Ms. Young's union activity have anything to do with your motivations for requesting a new math coach?

A. No.

(N.T. 108). I find this response to be not credible and that it undermines the entirety of Crenshaw's further testimony. Crenshaw's own email on July 10, 2019, clearly states that the reason she requested Young's transfer was because of Young's union activity. Her later denial of this fact at the hearing is self-serving and not believable.

Further, the Employer did not establish that Young was not adequately "doing her job as Math Coach." The Employer did not introduce any negative formal evaluations for Young nor does it appear Crenshaw relied on any negative formal evaluations of Young in her role as Math Coach. Crenshaw explained at the hearing that she believed Young had not supported three teachers at U-Prep, but I do not credit her testimony on this and instead credit Young's testimony that Young did in fact support these teachers. Regardless, even if Young had not supported these teachers adequately as Math Coach, I do not believe that the issue motivated Crenshaw's request to transfer Young. The Employer also did not establish that Young was in anyway sufficiently distracted from her duties as Math Coach by her duties as Building Rep to justify a transfer. Finally, there were additional pretextual reasons proffered by Crenshaw in her July 10 email and in her testimony including bad test scores by students at U-Prep. These justifications were not substantially or credibly supported at the hearing by the Employer, and Crenshaw's general lack of credibility in this matter firmly establishes their status as pretext.

Therefore, for the reasons stated above, the Employer has committed a violation of Section 1201(a)(3) of PERA. At the hearing, the Federation explained that it was not seeking a make-whole remedy and only requested a cease and desist order. Therefore, there shall be no make-whole remedy included in the following order.

CONCLUSIONS

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

1. The Pittsburgh Board of Public Education is a public employer within the meaning of Section 301(1) of PERA.
2. The Federation is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Pittsburgh Board of Public Education has committed unfair practices in violation of Section 1201(a)(1) and (3) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Pittsburgh Board of Public Education 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 or condition of employment to encourage or discourage membership in any employe organization.

3. Take the following affirmative action:

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

(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; and

(c) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 at Harrisburg, Pennsylvania, this fifteenth day of September, 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The Pittsburgh Board of Public Education hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (3) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public