

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CRESTWOOD EDUCATION ASSOCIATION, PSEA/NEA :  
:  
v. : Case No. PERA-C-22-293-E  
:  
CRESTWOOD SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On November 3, 2022, the Crestwood Education Association, PSEA/NEA (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Crestwood School District (District), alleging that the District violated Section 1201(a) (1), (3), and (5) of the Public Employe Relations Act (PERA or Act) by repudiating an agreement to return bargaining unit employe, Keelin Finn, to a classroom teaching position at the start of the 2022-2023 school year, in violation of its bargaining obligation, and in retaliation for Finn's protected activity.

On December 22, 2022, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation and directing a hearing on March 13, 2023, if necessary. The hearing was continued several times without objection and eventually ensued on April 8, 2024, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed separate post-hearing briefs in support of their respective positions on June 13, 2024. The Association filed a reply brief on June 26, 2024. The District filed a response to the Association's reply brief on July 11, 2024.

The Hearing 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. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7)
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. The Association is the exclusive bargaining representative for a unit of professional employes at the District. (Joint Exhibit 1)
4. Janice Ciavarella is a fourth-grade language arts teacher at the District. She has been a full-time employe there for 29 years. She served as President of the Association for three years, which included the 2021-2022 and 2022-2023 school years. (N.T. 22-24)
5. The District has three school buildings overall, two elementary buildings and one secondary campus. The elementary buildings are named Rice and Fairview Elementary, which both consist of grades K-6, while the secondary campus includes grades 7-12. (N.T. 24)
6. Keelin Finn is currently employed at Hazleton Area School District. She previously worked at Crestwood School District from 2007 to

June 2023 when she was furloughed. She is certified to teach grades K-6, meaning she can teach any grade between kindergarten and sixth grade. She was initially a first-grade teacher at Crestwood for a year before she taught second grade for nine years. She then taught sixth grade for about seven years. (N.T. 84-86)

7. For the 2021-2022 school year, Finn was a sixth-grade grammar and writing teacher assigned to Rice Elementary where she had always worked during her time in Crestwood. She testified that she was a classroom teacher, which meant that she had a homeroom and taught five sections of sixth graders in her subject area. She also described having a specific classroom at Rice, as well as recess or lunch duty. She explained that her homeroom responsibilities included taking attendance at the start of the day, as well as collecting papers and emergency cards. The students would come back at various points during the day to drop off books or get books for their next few classes. At the end of the day, the students would also return to their homeroom, at which point the homeroom teacher was responsible for making sure they had any information they needed or papers from the District, which had to be taken home. (N.T. 26-27, 86-88)

8. When Finn was a classroom teacher at Rice, she did not have to travel throughout the building and visit students. Instead, the students would always come to her. She testified that a classroom teacher is assigned a specific classroom, grade, and subject, along with homeroom responsibilities, and either recess or lunch duty. Classroom teachers are permanent positions. She had always been a permanent, classroom teacher at the District prior to the 2021-2022 school year. (N.T. 88-89)

9. During the 2020-2021 school year, Finn had several issues with her supervising Principal at Rice Elementary, Bonnie Gregory, for which she involved the Union. In one specific incident in March 2021, Finn experienced a Covid-19 exposure and requested to teach remotely, like several other teachers had done, until she could be tested, but Principal Gregory refused. (N.T. 90-93)

10. By email dated March 17, 2021, Union President Bill Kane<sup>1</sup> indicated to the District's Superintendent, Robert Mehalick, the following, in relevant part:

Good afternoon,

I am writing regarding Keelin Finn's quarantine. The [D]istrict and [Association] agreed in the fall that whenever possible teachers who were quarantined and healthy should teach their in-person classes remotely. The concept was mutually agreed upon because the [D]istrict is short staffed and [the Association] didn't want quarantine to adversely impact accrued sick days. This has successfully occurred in high school, middle school and Fairview.

Keelin reached out to me and I consulted with Bob Mehalick to see if there was a change in plan, but he remains comfortable with this solution. At the high school and middle school, in-person classes were supervised by either a substitute or covering

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<sup>1</sup> Janice Ciavarella was Vice President of the Association at the time. (N.T. 92).

teacher. The quarantined teacher was projected into the classroom either on Chromebooks, the Promethean Board, or smart [tv]. It was determined in the fall that this would best serve our in-person students and would also minimize sick days for quarantined teachers.

In short, Keelin should be allowed to teach her class remotely while in quarantine. Thank you in advance for your cooperation in this matter...

(N.T. 93-94; Association Exhibit 4)

11. By email dated March 17, 2021, Superintendent Mehalick replied to President Kane, with copies to Gregory, Ciavarella, and Finn, and indicated the following in relevant part:

Bonnie [Gregory],

I am fine with [Keelin Finn] teaching remotely and having a para or another appropriate adult be in the room while Keelin is teaching.

I am hoping we won't need to do this much more in the future; however, it may be the only [way] we deliver a quality instruction.

Thank you Bill for the email and I wish everyone a great afternoon...

(N.T. 94; Association Exhibit 4)

12. Finn described another incident she had with Principal Gregory in April 2021 during the District's Kindergarten Registration Day, during which Finn encountered a delivery man on the District's premises, who had been in a prior relationship with Finn's daughter and allegedly abused her daughter. Finn testified that the man was subject to a Protection From Abuse (PFA) order and owned a gun. She indicated that the situation between the man and her daughter was widely known by the District's employees, so the District's security guard checked on Finn after the delivery man allegedly stared at her. Finn removed herself from the lobby where the delivery man was and entered the District's gymnasium, which is out of view from the exit. (N.T. 95-96)

13. Finn testified that the District's security guard eventually notified her that the delivery man had left the building, after which she composed herself and left the gymnasium. When she was heading to the office, she observed Principal Gregory berating the security guard, at which time Gregory pointed at Finn and loudly demanded to see Finn in her office. Finn went into Gregory's office passing several of the paraprofessional employees and school secretaries, who were there to assist with Registration Day. Gregory slammed the door and began screaming and cursing at Finn, which was easily audible for the other employees. (N.T. 96-97)

14. Specifically, Principal Gregory screamed "[t]his is my [fucking] building. How dare you say who can and cannot be here, who the [fuck] do you think you are?" (N.T. 96)<sup>2</sup>

15. Finn began crying and told Gregory she had no idea what Gregory meant, after which Gregory accused Finn of telling the security guard to ask the delivery man not to come back. Finn denied Gregory's accusation and stated that she did not speak to the delivery man. Finn told Gregory that she removed herself from the situation. (N.T. 97)

16. Gregory then replied, "we'll see who's [fucking] lying," opened her door and left the office, eventually returning with the security guard, after which she again slammed the door shut, and stated "I want to know who's [fucking] lying to me. This is my [fucking] building." (N.T. 97-98)

17. Gregory continued to scream at Finn and the security guard before eventually telling Finn "I guess you didn't lie then." At that point, Finn was extremely upset and crying, and requested to take a half-day. Gregory replied simply "get out of here," after which Finn contacted the Union about the issue. (N.T. 98-99)

18. In May 2021, Finn received a copy of a letter from Association President Kane to Superintendent Mehalick, which provided, in relevant part, as follows:

I am writing out of deep concern and frustration related to the management style of one of your administrators. Over the last month, and frankly over the course of the [sic] many years, [the Association] has received multiple complaints related to Mrs. Gregory's interactions with professional staff. Mrs. Gregory has been described as angry, abusive, inappropriate, out of control, and threatening.

In recent weeks, we have received complaints of Mrs. Gregory berating an outside contractor in plain view and within earshot of other employees. During the same incident, she is alleged to have screamed angry profanities at a professional staff member related to the same issue.

This week alone, Mrs. Gregory was openly hostile and verbally aggressive with a professional staff member at Fairview Elementary and used angry and abusive language with a professional staff member at Rice. Both interactions were via telephone. In one instance the [Association] member reported being "scared to death to [sic] of Mrs. Gregory."

This behavior is unprofessional and counterproductive. Mrs. Gregory's actions have created a hostile work environment for employees that for one reason or another, raise her ire. Said employees have described working under a cloud of fear and "walking on eggshells" so as not to incur further negative interactions.

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<sup>2</sup> The testimony has been altered slightly to reflect the actual words allegedly spoken by Gregory since Finn only used the first letter of the curse words during the hearing to describe the event. (N.T. 96).

Our CBA has clear language related to disciplining employees. Please refer to Article III of our CBA entitled management rights. Nowhere in the text of our CBA does it state that management has the right to berate, belittle, or bully professional staff. Mrs. Gregory is bound by this section of the CBA and continued failure to adhere to our contract could result in legal action including but not limited to grievances or unfair labor practices.

Please be advised that the [Association] will do everything in its power to ensure that our members perform their professional duties in a safe, productive environment. We will not tolerate workplace harassment, or bullying of our members. The question becomes, why haven't you or previous administrators addressed this issue? It is my understanding that administrative staff and support staff have also complained about Mrs. Gregory's hostile behavior. If her inappropriate interactions continue, we will pursue all legal remedies...

(N.T. 99-101; Association Exhibit 5)

19. Finn testified that things got worse after the May 2021 letter. Principal Gregory called Finn into her office where one of the Association's building representatives was waiting. Gregory then told Finn that Gregory's lawyer had advised Gregory not to speak to Finn without Union representation present. Gregory stated to Finn that they were not to text each other and that any emails between them must have a copy to a building representative. Gregory further indicated that there would be no conversation between them unless it involved school business, and that it must be in writing. (N.T. 102)

20. Finn testified that Gregory's new directive was problematic because she could no longer go to her supervising principal with questions or concerns. Finn also explained how she was a head teacher, which meant that she had extra duties, such as being in charge of the safety patrol<sup>3</sup> and sixth grade graduation. Finn was supposed to meet with Gregory every couple weeks to discuss these ongoing school issues and attend PTA meetings with Gregory as a point of contact for the teachers. (N.T. 102-103)

21. Finn testified that she continued to have issues with Gregory during the 2021-2022 school year. Specifically, Finn described how Gregory removed her head teacher duties, which eventually led to the Association filing a charge with the Board docketed at PERA-C-21-284-E, alleging a unilateral removal of bargaining unit work, as well as unlawful retaliation for Finn's protected activities. The parties ultimately entered into a settlement agreement, which completely resolved those outstanding issues. (N.T. 103, 108-109; Association Exhibit 6, 7)

22. Finn testified that, during the fall of 2021, the District held an event entitled "Race for Education," wherein the high school cheerleaders and band came to essentially hold a pep rally for the children. Finn was approached by one of the cheerleaders, who made a complaint to Finn about other students. As a result, Finn requested another sixth-grade teacher ask those students about the situation. However, Principal Gregory intervened

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<sup>3</sup> Safety patrol apparently consists of sixth grade students, who assist with dismissal at the end of the day. (N.T. 103).

with a building representative and proceeded to berate Finn in front her colleagues and students. Gregory was yelling that Finn had no right to question a student because that was Gregory's job, to which Finn replied that she was just asking what happened and not making accusations or attempting to discipline anyone. Finn testified that this occurred after Gregory had directed that there be no more verbal communication between Gregory and Finn. (N.T. 110-112)

23. Finn testified that, during the fall of 2021, Gregory would not let Finn speak during team meetings between all the sixth-grade teachers. When Finn would say something that was relevant, Gregory would cut her off. Gregory also attended a PTA meeting, during which she told the PTA and the audience that Finn had not given Gregory the fall picture schedule, which was untrue. The PTA asked Finn when she would have that schedule completed, to which Finn replied that she had already emailed the schedule. Finn immediately found the email she had sent to Gregory after the meeting and resent it. Finn again involved her Union in September or October 2021, after which she was advised that Gregory would not speak to her. (N.T. 112-113)

24. Finn testified that, during the fall of 2021, she attended a meeting with Janice Ciavarella, Peg Foster, who was an administrator for the District, and Gregory, during which the parties discussed the head teacher duties. While Finn was taking notes, Gregory leaned over the table, and in a demeaning tone, stated "do you need me to speak slower so that you get the correct information written down?"<sup>4</sup> (N.T. 113-115)

25. At that point, District Administrator Foster rebuked Gregory and stated "Bonnie, stop," which prompted Gregory to reply "well, she lies about everything. She doesn't write proper notes. I just want to make sure she understands me." Ciavarella then ended the meeting. Foster also advised that Gregory would not be doing any of Finn's observations. Foster would do them instead. (N.T. 114-115)

26. On October 25, 2021, Association President Ciavarella attended a zoom meeting with the District's Superintendent, Robert Mehalick, and Human Resources Director, Natasha Milazzo, during which the parties discussed Finn's situation with Gregory. Mehalick indicated that his plan was to "move Keelin[,] put in a long-term substitute and do intervention." (N.T. 38-39; Association Exhibit 1)

27. On November 4, 2021, Ciavarella attended another meeting with the District. Present for the Association, in addition to Ciavarella, were Association Vice President, Lori Rozitski, and Finn, while Mehalick, Milazzo, and Foster were present for the District. During that meeting, Mehalick advised that Finn would be transferred to Fairview on November 9, 2021 where she would work as a day-to-day substitute to be used as needed. Mehalick also advised that Finn would be "back in the classroom next year." Ciavarella testified that she understood this to mean that Finn would leave her intervention specialist position and return to a regular classroom position the next school year. (N.T. 39-40; Association Exhibit 1)

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<sup>4</sup> While not specifically reflected in the transcript, Finn imitated Gregory's tone during the hearing by essentially shouting each word and taking a long pause before proceeding to the next word of the sentence, demonstrating Gregory's extremely abrasive and caustic manner, which was obviously meant to mock Finn at the meeting. (N.T. 114).

28. The District transferred Finn to Fairview on November 8 or 9, 2021 before the parties finalized an agreement. (N.T. 28, 122)

29. On November 19, 2021, the parties entered into a Memorandum of Understanding (MOU), which was negotiated by Association President Ciavarella and Superintendent Mehalick. Finn testified that she also participated in the negotiations. (N.T. 25-26, 115-116; Joint Exhibit 1)

30. The MOU provides, in relevant part, as follows:

1. As of November 8, 2021, Keelin Finn, a professional employee currently assigned to Rice Elementary, will be transferred to Fairview Elementary.
2. For the remainder of the 2021-2022 school year, her duties at Fairview will include intervention/remediation and/or filing [sic] in as a substitute when needed.
3. If a permanent position or a temporary position for an extended period becomes available at Fairview Elementary, Ms. Finn will be placed in that position.
4. In the 2022-2023 school year, Ms. Finn will return to the classroom.
5. Ms. Finn's vacated position at Rice Elementary will be filled immediately by a long-term substitute, and the Association agrees to waive the necessity for a job posting to fill this long-term substitute position.
6. The Head Teacher position at Rice Elementary will be posted immediately at a prorated amount for the remainder of the school year.
7. The individuals signing on behalf of the District and the Association state that he/she has been duly authorized in accordance with law to enter into and execute this Agreement on behalf of and with permanent binding effect upon the District and the Association and individual members thereof.
8. Furthermore, it is expressly understood by the Parties that this MOU does not change or attempt to change any provision contained in the CBA, any other agreements between the Parties, or any past practices. It is further expressly understood by the Parties that this MOU will not be considered either a past practice or evidence of a lack of past practice. It is further expressly understood that neither the District nor the Association shall use this MOU as evidence of either a past practice or lack of past practice in any grievance, arbitration, or other legal proceeding...

(Joint Exhibit 1)

31. The District hired a long-term substitute to fill the vacant sixth-grade teaching position at Rice that resulted from Finn's transfer to Fairview. (N.T. 45)

32. On December 21, 2021, Ciavarella attended a meeting with a number of the District's School Board members, in addition to Mehalick, Milazzo, and the District's lawyer. Also present for the Association were Vice President Rozitski and Finn. During this meeting, Finn complained that she was being underutilized and felt like she had taken a demotion to be a substitute. Finn also clarified her understanding of the MOU for the School Board members

was that she was not to be placed in the same building as Principal Gregory. (N.T. 41-43; Association Exhibit 1)

33. Finn testified that the first paragraph of the MOU, which provides for her transfer to Fairview Elementary, was the result she wanted because she was an emotional wreck due to Principal Gregory's conduct. (N.T. 116-118)

34. Finn explained that intervention/remediation duties, which are referenced in paragraph 2 of the MOU, involve a Title I position. She described the position as being a reading interventionist to help students read and further their skills. She testified that the position is essentially a "pull-out teacher," meaning that she would go and get her students from several different classrooms and bring them to a room where she could work with them before returning them to their classrooms. Association President Ciavarella corroborated this testimony. (N.T. 29-30, 118-119)

35. Finn testified that the remediation specialist teacher was not a permanent position. Fairview Elementary Principal Kevin Seyer explained to Finn that the position was funded through money related to the Covid-19 pandemic, which enabled the District to hire one extra Title I teacher at each elementary building. (N.T. 30-31, 119)

36. Finn testified that the intervention/remediation specialist position was not a classroom teacher because she did not have any homeroom assignments or duties, such as taking attendance or entering grades. She also did not have lunch or recess duty, nor was she involved with her students in any of the activities that went on at the school. She also testified that classroom teachers are assigned only one grade, whereas she was assigned more than one grade in her remediation position. Specifically, she serviced grades K-3 in her first year at Fairview and grades K-4 in her second year. Ciavarella again corroborated this testimony. (N.T. 29-32, 35-36, 119-120)

37. Finn testified that she understood paragraph 4 of the MOU to mean that she would be returned to a classroom teaching position where she would be assigned one specific grade, along with a homeroom, and teach the curriculum for that grade. She explained that her prior teaching position at Rice had always been permanent and that she understood the MOU to mean that she would be returned to a permanent teaching position, as well. Ciavarella had the same understanding and testified that those were the details they had negotiated with Superintendent Mehalick in the MOU. Specifically, Ciavarella explained that the District has teachers with different positions. She described how gym teachers, music teachers, and learning support teachers are not considered classroom teachers because of their specialization and the fact that they do not have a homeroom where they take attendance, handle lunch or recess duty every day, issue report cards, and service one specific grade. (N.T. 31-32, 34-35, 120-121)

38. Finn testified that paragraph 5 of the MOU, which allows the District to fill her previous teaching position with a long-term substitute, was included, so that her position was not filled on a permanent basis. She indicated that it was left open for a classroom teacher to fill, so that she could return to the position. Ciavarella again corroborated this testimony. (N.T. 36-37, 121-122)



39. Finn testified that she was transferred to Fairview on November 8, 2021 before the MOU was finalized. She involved the Union around that time again and specifically requested that she be in a classroom teaching situation as soon as possible because she was initially designated to be a substitute. She performed her duties as a floating substitute at Fairview until February 2022 when she became the intervention/remediation specialist. She remained in the intervention/remediation specialist position until the end of the 2021-2022 school year and received her full salary and benefits for that school year. (N.T. 28, 122-124, 131)

40. Principal Gregory left the District in the summer of 2022. (N.T. 45-46, 124)

41. Finn testified that she did not return to the classroom for the 2022-2023 school year, despite paragraph 4 of the MOU. Instead, she remained at Fairview in the Title I reading interventionist position, which was the same position she held the previous school year after her transfer from Rice. She stayed in the reading interventionist position at Fairview for the entire 2022-2023 school year and received her full salary and benefits for that school year. (N.T. 125-126, 131)

42. Finn testified that there was a vacancy at Rice for her previous classroom teaching position at the start of the 2022-2023 school year. Association President Ciavarella confirmed that the long-term substitute, who replaced Finn pursuant to the MOU, was no longer at Rice. (N.T. 46, 126-128)

43. Finn spoke with Rice Elementary Principal, Peg Foster, during the summer of 2022, about returning to a classroom teaching position there. Finn asked Foster if she was going to be in the same classroom that she previously had since it was open, and Principal Gregory was gone. Foster replied that Finn was not on Foster's teaching list and that Finn was not going to be in the building. (N.T. 128-129)

44. On July 27, 2022, Association President Ciavarella had a telephone conversation with Foster about the vacancy for a sixth-grade teacher at Rice. Foster told Ciavarella that the School Board would not move Finn back to Rice. Foster also admitted that she asked all the second-grade teachers for a volunteer to fill the sixth-grade position. Ciavarella advised Foster that the position had to be posted or the Union would file a grievance. (N.T. 47-52; Association Exhibit 2)

45. On July 28, 2022, Ciavarella had a telephone conversation with the School Board President, Barry Boone, who indicated that the School Board would not move Finn back to Rice and that they were tired of her because "she keeps changing her mind." Boone told Ciavarella to file a grievance. (N.T. 48-53; Association Exhibit 2)

46. By letter dated July 28, 2022, the Association's counsel indicated to the District's lawyer the following, in relevant part:

Dear Jack,

As you know, I represent the [Association.] I am writing on behalf of Association member Keelin Finn.

As you know from our related unfair labor practice litigation, Keelin was transferred during the 2021-2022 school year from Rice

Elementary (where she was a sixth grade classroom teacher and Head Teacher for Rice) to Fairview Elementary (to the position of Intervention/Remediation Specialist, a non-classroom teaching position). We have recently discussed, as resolution of the labor proceeding, returning Keelin to Rice Elementary.

It is [sic] now come to my attention, however, that Keelin is already legally entitled to this arrangement under a Memorandum of Understanding the parties signed in November, 2021...The MOU specifically provides that Keelin will return to a classroom teaching position at the start of the 2022-2023 school year (quickly approaching now). The MOU also provided that only a long-term substitute would fill the classroom position at Rice which Keelin vacated last Fall (meaning the position is now vacant). Finally, it is my understanding there are now five sections of sixth grade classes at Rice, which is the same number as last year when Keelin transferred.

Under the MOU, thus, Keelin must be returned to Rice Elementary (a classroom teaching position such as Sixth Grade teacher) and her Head Teacher position. It is my understanding the District is currently in the process of finalizing teacher assignments for 2022-2023. I am therefore sending you this letter, now, to make sure the MOU is followed...

(N.T. 54-56, 169; Association Exhibit 3)

47. The District declined to return Finn to a classroom teaching position for the 2022-2023 school year and instead kept Finn in the interventionist specialist position at Fairview Elementary, which was the same position she held during the spring of 2022. Finn remained in the reading interventionist position for the entire 2022-2023 school year. The Association never agreed to the District keeping Finn in the reading interventionist position for the 2022-2023 school year. (N.T. 57-59)

48. The District filled the sixth-grade teaching position at Rice by moving a second-grade teacher into that position. (N.T. 58)

49. On August 5, 2022, the Association filed a grievance alleging that the District violated the collective bargaining agreement (CBA) by failing to post for the sixth-grade teaching vacancy at Rice. The grievance was subsequently withdrawn. (N.T. 61-65, 76-77; District Exhibit 1)

50. On cross-examination, Finn acknowledged sending an email to the District's new Superintendent, Vito Quaglia, on June 7, 2022, which provided in relevant part as follows:

Dear Mr. Quaglia,

[Fairview Principal Kevin Sayer] informed me this morning of my tentative position for the 2022-2023 school year is to continue as a Reading Interventionist at Fairview Elementary. I appreciate the fact that I'm going to remain at Fairview...

(N.T. 150-151; District Exhibit 5)

51. Finn explained that, at the time of her June 7, 2022 email to Quaglia, she thought that Principal Gregory was still working at Rice Elementary. She described how she appreciated that she was going to remain at Fairview because she would not be in the same building as Gregory. When questioned whether Gregory had already left the District at that time, Finn denied having any knowledge of Gregory's departure at that point. Nor did Finn know that Gregory was going to leave yet either. Finn did not have her conversation with Foster about returning to Rice Elementary until after she learned that Gregory was leaving. (N.T. 151-152, 163-165)

52. The District introduced the testimony of Kevin Seyer, the Principal of Fairview Elementary, in support of its position. Seyer has been the Principal at Fairview Elementary for the last seven years. He was the Principal at Rice Elementary for 12 years prior to his time at Fairview. He is also the District's Federal Programs Coordinator. (N.T. 174-175)

53. Seyer testified that Finn initially served as a day-to-day substitute when she transferred to Fairview in the fall of 2021. He explained that she would fill in for professional staff when they would call off work. If nobody called off, Finn would still assist in other places. Seyer testified that, in this role, Finn went to a different room every day. (N.T. 175-176)

54. Seyer did not have any involvement in negotiating the MOU between the parties. He learned that Finn would be coming to Fairview from Superintendent Mehalick. (N.T. 176)

55. Seyer testified that he is responsible for teacher assignments at Fairview during the school year. He claimed that his relationship with Finn has been collegial. (N.T. 176-177)

56. Seyer testified that, as Federal Programs Coordinator, he was intimately involved with creating the Reading Interventionist position because it included federal money. He described how the District targeted the 91<sup>st</sup> day of school, which was February 22, to get the position added because that was the half year point. (N.T. 177-178)

57. Seyer testified that the Reading Interventionist position at Fairview provided Finn with professional responsibilities more commensurate with what she was interested in and beyond the day-to-day substitute position. He explained that the Reading Interventionist position put Finn in the same classroom every day, which was a change from the day-to-day substitute position. (N.T. 178-179)

58. Seyer testified that Finn expressed interest in the Reading Interventionist position and was eventually placed in that position where she remained for the last 90 days of the 2021-2022 school year. He indicated that he decided at the end of the 2021-2022 school year that Finn would remain in the Reading Interventionist position for the 2022-2023 school year because there were no places for her to go within Fairview. He stated that all the Fairview teacher assignments were taken. (N.T. 179-181)

59. Seyer testified that his decision to keep Finn in the Reading Interventionist position for the 2022-2023 school year did not have anything to do with Finn asserting her right to work remotely when she had a Covid-19 exposure, her decision to involve the Union over that issue and/or her issues with Principal Gregory, the Union's threat to file a grievance and/or a

charge of unfair practices, or any of Finn's other protected conduct related to the MOU. (N.T. 181-183)

60. On cross-examination, Seyer admitted that, in making his decision to keep Finn in the Reading Interventionist position at Fairview for the 2022-2023 school year, he did not consider any positions at Rice Elementary because he is only responsible for teacher assignments at Fairview. (N.T. 185-186)

#### DISCUSSION

The Association argues that the District violated Section 1201(a)(1), (3), and (5) of the Act<sup>5</sup> by repudiating the November 19, 2021 MOU and refusing to return Keelin Finn to a classroom teaching position at the start of the 2022-2023 school year, in violation of its bargaining obligation, and in retaliation for Finn's protected activity. The Association also contends that the District independently violated Section 1201(a)(1) of the Act by refusing to return Finn to a classroom teaching position for the 2022-2023 school year because the District's conduct would have a tendency to coerce employees in the exercise of their right to involve the Union in their workplace disputes. The District, for its part, submits that the charge should be dismissed because the charge was not timely filed within the four-month limitations period of the Act. The District also maintains that the charge should be dismissed because it did not repudiate or violate the MOU. Instead, the District posits that it had a sound arguable basis for its conduct. The District further contends that the charge should be dismissed because the Association failed to sustain its burden of proving unlawful motive.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." 43 P.S. § 1101.1505. As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township, 32 PPER § 32101 (Final Order, 2001). For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. Harmar Township Police Wage and Policy Committee v. Harmar Township, 33 PPER § 33025 (Final Order, 2001). Implementation is the date when the directive becomes operational and serves to guide the conduct of employees, even though no employees may have been disciplined or corrected for failure to abide by the directive. *Id.* Mere statement of future intent to engage in activity, which arguably would constitute an unfair labor practice, does not constitute an unfair labor practice for engaging in that activity. Upper Gwynedd Township, at 264. The Board will dismiss a charge as prematurely filed where the

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<sup>5</sup> Section 1201(a) of the Act provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act...(3) 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...(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

complainant files the charge prior to actual implementation. City of Allentown, 19 PPER § 19190 (Final Order, 1988).

The District's argument that the charge is untimely is without merit. In its post-hearing brief, the District claims that Finn had notice that she would remain at Fairview for the 2022-2023 school year as of June 7, 2022 when Principal Seyer indicated the same to her. The District insists that the charge needed to be filed no later than October 7, 2022 then to satisfy the Act's four-month limitations period. However, the District relies on Seyer's statement of future intent in making this claim, which does not start the clock for the limitations period. While Seyer may have decided to keep Finn in the same position for the 2022-2023 school year on June 7, 2022, his decision was nevertheless not effective until Finn actually began her assignment in the Reading Interventionist position in August 2022.<sup>6</sup> The Association's charge alleges a refusal to bargain based on a repudiation of the MOU, along with retaliation for protected activity, which are both based on a discrete event, i.e., the refusal to place Finn in a classroom teaching position for the 2022-2023 school year. Despite Principal Seyer's indication to Finn on June 7, 2022 that she would remain in the remediation specialist position, the District could have changed its mind at any point prior to the start of the 2022-2023 school year. Recognizing this obvious fact, the Association's lawyer attempted to convince the District to place Finn in a classroom teaching position on July 28, 2022. That the District declined to do so does not somehow start the clock under PERA for a refusal to bargain charge or an adverse employment action prior to actual implementation. Indeed, if the Association had filed its charge prior to the start of the 2022-2023 school year, the Board would have dismissed it as premature. See Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 35 PPER 114 (Final Order, 2004) (holding that the Board and its hearing examiners do not have jurisdiction to entertain premature claims that are not ripe for adjudication). The simple fact remains that the District did not implement Finn's assignment for the 2022-2023 school year, which is the alleged repudiation and adverse employment action at issue, until the actual start of that school year when she began teaching in the remediation specialist position. As such, the Association's November 3, 2022 charge was timely filed under the Act.<sup>7</sup>

Turning to the merits of the dispute and the Association's argument that the District repudiated the MOU, it is well settled that the Board exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract. Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000). Where a breach of contract is alleged, interpretation of collective bargaining agreements typically is for the arbitrator under the grievance procedure set forth in the parties' collective bargaining agreement. *Id.* at 649. However, the Board will review an agreement to determine whether the employer has clearly repudiated its

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<sup>6</sup> In fact, Seyer's notice to Finn, by its own terms, was of her tentative assignment for the next school year.

<sup>7</sup> What is more, the Board has long held that notice to employees, like Finn, is not considered notice to the union unless it is shown that the employees are the union's agents. Teamsters Local 77 v. Delaware County, 29 PPER ¶ 29087 (Final Order, 1998), aff'd sub nom., County of Delaware v. PLRB, 735 A.2d 131 (Pa. Cmwlth. 1999), appeal denied, 561 Pa. 679, 749 A.2d 473 (2000); AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Military Affairs, 22 PPER ¶ 22205 (Final Order, 1991).

provisions because such a repudiation may constitute both an unfair labor practice and a grievance. *Id.*

In addition, the Board has adopted the sound arguable basis or contractual privilege defense to a claimed refusal to bargain, which calls for the dismissal of a charge when the employer establishes a sound arguable basis in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the employer's action was permissible, i.e. contractually privileged under the terms of that agreement. Temple University Hospital Nurses Ass'n et. al. v. Temple University Health System, 41 PPER ¶ 3 (Final Order, 2010). Where the employer asserts a contractual right to change a mandatory subject of bargaining, it must point to specific, agreed-upon contract language which arguably indicates the union expressly and intentionally authorized the employer to take the precise unilateral action at issue. *Id.* citing Port Authority Transit Police Ass'n v. Port Authority of Allegheny County, 39 PPER 147 (Final Order, 2008). An employer's action must be in accordance with the terms of the contract as he construes it for the contractual privilege defense to apply. Port Authority Transit Police Ass'n v. Port Authority of Allegheny County, 39 PPER 104 (Proposed Decision and Order, 2008).

In this case, the Association has sustained its burden of proving that the District violated the Act by repudiating the November 19, 2021 MOU. As detailed above, the MOU provides, in relevant part, as follows:

1. As of November 8, 2021, Keelin Finn, a professional employee currently assigned to Rice Elementary, will be transferred to Fairview Elementary.
2. For the remainder of the 2021-2022 school year, her duties at Fairview will include intervention/remediation and/or filing [sic] in as a substitute when needed.
3. If a permanent position or a temporary position for an extended period becomes available at Fairview Elementary, Ms. Finn will be placed in that position.
4. In the 2022-2023 school year, Ms. Finn will return to the classroom.
5. Ms. Finn's vacated position at Rice Elementary will be filled immediately by a long-term substitute, and the Association agrees to waive the necessity for a job posting to fill this long-term substitute position...

(Joint Exhibit 1).

The instant dispute ostensibly hinges on the definition of the word "classroom" in paragraph 4 of the MOU. The Association contends that the term "classroom" essentially required the District to return Finn to a permanent classroom teaching position, similar to the position she held as a sixth-grade teacher at Rice Elementary prior to her transfer. The Association argues that this interpretation is supported by the only evidence of record, which the parties clearly intended when they entered the agreement. The District, on the other hand, takes issue with the Association's alleged reliance on parol evidence and maintains that the term "classroom" should be read in accordance with its ordinary, everyday meaning, such that the District was only required to provide Finn with her own physical classroom for her teaching assignment during the 2022-2023 school year. Thus, the District reasons that it not only complied with the MOU by keeping Finn in the reading interventionist position for the 2022-2023 school

year, but that it had a contractual privilege to do so. The District's argument is unavailing.

First of all, it is not necessary to resort to parol evidence to discern the meaning of the term "classroom" in the MOU. The first paragraph of the MOU provides for Finn's transfer from Rice Elementary to Fairview in November 2021. The second paragraph states that her duties at Fairview for the remainder of the 2021-2022 school year "will include intervention/remediation and/or [filling] in as a substitute when needed." Finn clearly held both of these roles, as the record shows that she initially worked as a day-to-day substitute at Fairview until she eventually became the reading interventionist in February 2022. The MOU's third paragraph, which states that Finn will be placed in a permanent position at Fairview if one becomes available, plainly dispels any notion that the intervention/remediation and substitute positions that Finn held during the 2021-2022 school year are permanent positions. Indeed, if the intervention/remediation and substitute positions were interpreted as permanent, then the MOU's entire third paragraph would be rendered superfluous. Of course, the same result obtains with regard to the clause indicating that Finn would be placed in any available temporary position for an extended period. Obviously, if the intervention/remediation and substitute positions were permanent or temporary for an extended period, then there is absolutely no need whatsoever for the MOU's entire third paragraph, since Finn was already being placed in those positions in the MOU's second paragraph. The MOU's third paragraph, then, clearly defines the intervention/remediation and substitute positions as being neither permanent, nor temporary for an extended period.

The District's argument is further belied by the MOU's fourth paragraph, which provides that Finn "will return to the classroom" for the 2022-2023 school year. The plain meaning of this paragraph is also clear in that it differentiates "the classroom" from the intervention/remediation and substitute positions. To be sure, the parties used the word "return," which indicates that Finn would go back to a role she held before the 2021-2022 school year. As the Association points out, the MOU's second paragraph specifically indicates that Finn would hold the intervention/remediation and/or substitute positions "[f]or the remainder of the 2021-2022 school year," after which the fourth paragraph indicates that she "will return to the classroom" for the 2022-2023 school year. The record shows that the only position Finn ever held at the District prior to the 2021-2022 school year was as a permanent classroom teacher, who had homeroom responsibilities and who taught a specific grade and subject area. As a result, the District was required to return Finn to a permanent classroom teaching position for the 2022-2023 school year, which it failed to do. As previously set forth above, the District did not change Finn's assignment at all and instead forced her to stay in the intervention/remediation position at Fairview for the 2022-2023 school year instead. Accordingly, the District has clearly repudiated the MOU and violated its bargaining obligation under Section 1201(a) (5) of the Act.

The District's arguments that it complied with the MOU and that it had a contractual privilege to keep Finn in the intervention/remediation position are untenable. As detailed above, the MOU simply cannot be read as mandating or privileging the District's conduct. As the Union correctly notes, the MOU's second paragraph, indicating that Finn's duties would include intervention/remediation and/or filling in as a substitute when needed for the remainder of the 2021-2022 school year, when combined with the MOU's

fourth paragraph, indicating that Finn would return to the classroom for the 2022-2023 school year, required that Finn's duties had to change in at least some manner between the 2021-2022 and 2022-2023 school years. There is simply no support in the MOU for the District's claim that it could keep Finn in the intervention/remediation position for anything beyond the remainder of the 2021-2022 school year. To the contrary, the overwhelming evidence of record, including the statements of the District's Superintendent who negotiated the MOU, shows that the parties clearly intended Finn to return to a permanent classroom teaching position for the 2022-2023 school year.<sup>8</sup> The inclusion of the fifth paragraph of the MOU, which precludes the District from filling the vacancy left by Finn's transfer with a permanent teacher, further supports the Association's position. The District would have this Board read the fourth paragraph of the MOU to state that "Finn will **remain in the intervention/remediation position,**" but that is a far cry from what the MOU actually says. In this vein, Principal Seyer, who claims to have made the decision to keep Finn in the intervention/remediation position at Fairview, did not testify that he did so to comply with the MOU or because he was authorized to do so under the terms of the MOU. Nor did the District's School Board President, Barry Boone, make a similar claim when he discussed the issue with Association President Ciavarella on July 28, 2022. Rather, Seyer testified that he decided at the end of 2021-2022 school year that Finn would remain in the intervention/remediation position for the 2022-2023 school year because there were no other positions available at Fairview. He testified that all the Fairview teacher assignments were taken. The obvious inference being that Seyer would have potentially changed Finn's assignment and placed her in a permanent classroom teaching position had something been available at Fairview. Boone, meanwhile, admitted that the School Board was keeping Finn in her position at Fairview because they were tired of her changing her mind.<sup>9</sup> Thus, the District's actions were not at all in accordance with the terms of the contract as the District attempts to construe it now, which is also fatal to its contractual privilege claim.<sup>10</sup>

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<sup>8</sup> While it is generally not the function of the hearing examiner to arbitrate the agreement between two plausible interpretations, AFSCME DC 47 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005), the Board holds that, where the agreement uses nomenclature unique to the industry or workplace, testimony and evidence may be necessary to determine whether there was a meeting of the minds on the agreement or whether the terms used are susceptible to more than one meaning and application. PSCOA v. Commonwealth of Pennsylvania, Dept. of Corrections (SCI Rockview), 47 PPER 43 (Final Order, 2015). The evidence here shows that there is simply no other plausible interpretation of the MOU.

<sup>9</sup> As discussed below, this statement by Boone clearly evinces the District's discriminatory intent.

<sup>10</sup> Inexplicably, the District also claims that it did not violate the MOU because of Finn's June 7, 2022 email to new-Superintendent Quaglia, in which Finn stated that she appreciated that she would remain at Fairview after Seyer told her the same. Once again, however, the District's argument lacks merit. The June 7, 2022 email from Finn cannot be read as some kind of bargained-for agreement for her to remain at Fairview in the intervention/remediation position. And, even if there were some sort of negotiated agreement between Seyer and Finn in this regard, the District fails to understand that, instead of being a defense to the instant charge, this would actually constitute unlawful direct dealing by the District, which would be a separate bargaining violation from those already charged in this matter. If the District wanted to change the terms of the MOU, it was obligated to seek out its bargaining counterpart, the Association, and



However, even if the District were somehow contractually privileged to keep Finn in the intervention/remediation position for the 2022-2023 school year, the District still violated Section 1201(a)(3) of PERA since the record shows that the District kept Finn in that role due to unlawful anti-union animus.<sup>11</sup>

In a Section 1201(a)(3) discrimination claim, the Complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employe engaged in activity protected by PERA; (2) that the employer knew the employe engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employe's involvement in protected activity. Audie Davis v. Mercer County Regional Council of Government, 45 PPER 108 (Proposed Decision and Order, 2014) (citing St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977)). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Once a prima facie showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity. Teamsters Local 776 v. Perry County, 23 PPER ¶ 23201 (Final Order, 1992). If the employer offers such evidence, the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual. Teamsters Local 429 v. Lebanon County, 32 PPER ¶ 32006 (Final Order, 2000). The employer need only show by a preponderance of the evidence that it would have taken the same actions absent the protected conduct. Mercer County Regional COG, supra, (citing Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 (Final Order, 1992)).

The Board has recognized that, in the absence of direct evidence, it will give weight to several factors upon which an inference of unlawful motive may be drawn. City of Philadelphia, 26 PPER ¶ 26117 (Proposed Decision and Order, 1995). The factors which the Board considers are: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities—for example,

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negotiate with it, as the employe representative. In addition, the District's argument that the charge should be dismissed because the Association failed to file a grievance must also be rejected. The District, of course, cites absolutely no authority for the proposition that the Board is somehow ousted of its jurisdiction simply because the charging party did not file a grievance. In fact, as already set forth above, the Board has long recognized that it will review an agreement to determine whether the employer has clearly repudiated its provisions because such a repudiation may constitute both an unfair labor practice and a grievance. Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000).

<sup>11</sup> The Board has long held that a public employer's managerial prerogative does not insulate it from the statutory obligation to exercise that authority without anti-union discrimination. Twin Valley Educational Support Professionals Ass'n, PSEA/NEA v. Twin Valley School District, 49 PPER 72 (Proposed Decision and Order, 2018) (citing Teamsters Local No. 205 v. Brentwood Borough, 35 PPER 112 (Final Order, 2004); United Steel Workers of America, Local 8125 v. East Taylor Township, 24 PPER ¶ 24166 (Final Order, 1993); Mid Valley Education Ass'n v. Mid Valley School District, 25 PPER ¶ 25138 (Final Order, 1994)). Under the color of a managerial right, a public employer does not have the authority to retaliate against employes who engage in protected activity. Twin Valley School District, 49 PPER at 300.

whether leading organizers have been eliminated; the extent to which the adversely affected employees engaged in union activities; and whether the action complained of was "inherently destructive" of employee rights. City of Philadelphia, supra, (citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978)). Although close timing alone is insufficient to support a basis for discrimination, Teamsters Local 764 v. Montour County, 35 PPER 12 (Final Order, 2004), the Board has long held that the timing of an adverse action against an employee engaged in protected activity is a legitimate factor to be considered in determining anti-union animus. Berks Heim County Home, 13 PPER ¶ 13277 (Final Order, 1982).

Here, the Association has easily met its burden of establishing the first two prongs of the Section 1201(a)(3) test. The record shows that Finn has engaged in protected activity by repeatedly involving her Union in various issues and disputes with her supervisor, Principal Gregory. Finn initially sought the Union's assistance in March 2021 when Gregory refused to allow Finn to work remotely after a Covid-19 exposure. Finn also continually sought the Union's intervention on her behalf in the spring of 2021 and then again in the fall of 2021 at the start of the next school year until the Union eventually began negotiating the MOU with the District in October 2021. The Union even filed a prior unfair practices charge, specifically alleging discrimination against Finn, on December 21, 2021, which was docketed at PERA-C-21-284-E. Likewise, the record shows that the District clearly had knowledge of Finn's protected activity. Union President Bill Kane sent an email to Superintendent Mehalick in March 2021 challenging Gregory's denial of Finn's request to work remotely. Mehalick then replied in March 2021, with copies to Gregory, essentially overruling Gregory's denial and granting Finn's request to work remotely. In May 2021, then-President Kane also forwarded a letter protesting Gregory's conduct and referencing several recent incidents, including Finn's April 2021 encounter with Gregory, to Superintendent Mehalick. Further, Principal Gregory and Administrator Foster were present for a fall 2021 meeting with the Union, during which the parties discussed Finn's head teacher duties and wherein Gregory's anger with Finn became readily apparent to all in attendance. The Union then began negotiating the MOU with the District in late October 2021, which Mehalick and Human Resources Director Milazzo attended. On November 4, 2021, Mehalick, Milazzo and Foster attended another meeting with the Union to discuss the MOU and Finn's transfer. Mehalick signed the MOU on November 19, 2021, and the parties thereafter met again to discuss the MOU on December 21, 2021, which was attended by a number of the District's School Board members. Thus, it cannot be seriously disputed that Finn has engaged in activity protected by the Act, of which the District had knowledge. As usual then, the issue in this case depends on whether the District was motivated by Finn's protected activity when it decided to keep her in the intervention/remediation position at Fairview for the 2022-2023 school year.

The Association has also sustained its burden of proving the third prong of the discrimination test under Section 1201(a)(3) of the Act. In fact, the record is virtually dripping with animus, which all began in March 2021 after Finn initially went to her Union for assistance following her Covid-19 exposure. Approximately one month later, in April 2021, Finn encountered the delivery man on the District's premises, which ultimately resulted in a very public and severe berating from Gregory that was grossly

disproportionate to any perceived offense allegedly committed by Finn.<sup>12</sup> Finn's once friendly relationship with Gregory, (N.T. 131-132), had suddenly become fraught and irrevocably damaged, which happened just shortly after Finn had sought the Union's assistance in March 2021, yielding an obvious inference that Gregory's hostility was a direct result of that protected conduct. If that were not enough, Gregory seemingly went on a rampage thereafter and exhibited a troubling pattern of escalating behavior, singling out Finn and punishing her for having the gall to involve the Union and go over Gregory's head. Indeed, Gregory proceeded to cut off nearly all communication between herself and Finn after the Union complained about Gregory's conduct in a May 2021 letter to Superintendent Mehalick. During the fall of 2021, Gregory once again subjected Finn to a severe upbraiding at the District's "Race for Education" in front of students and co-workers, despite her prior indication that there should be no verbal communication between them. Gregory also refused to let Finn speak during team meetings between the sixth-grade teachers and apparently falsely accused Finn of not providing a fall picture schedule to the PTA. Gregory also derisively mocked Finn at a meeting in the fall of 2021 with Association President Ciavarella and District Administrator Foster, which even prompted Foster to rebuke her and Ciavarella to end the meeting. Of course, these incidents were just several months removed from when Finn initially sought the Union's assistance in dealing with Gregory, which further supports an inference of unlawful motive. The record does show that Gregory eventually left the District in the summer of 2022. Unfortunately for the District, however, the evidence of its unlawful motivation does not end there.<sup>13</sup>

Perhaps even more compelling than Gregory's open disdain towards Finn after Finn involved the Union in the spring of 2021 are the admissions of District Administrator Foster and School Board President Boone in July 2022. On July 27, 2022, Union President Ciavarella had a telephone conversation with Foster, during which the two discussed the vacancy for a sixth-grade teacher at Rice. Foster told Ciavarella that the School Board would not move Finn back to Rice, despite the fact that Gregory had already left the District by that time. On July 28, 2022, Ciavarella had a telephone conversation with School Board President Boone, during which Boone stated that the School Board would not move Finn back to Rice and that they were tired of her because "she keeps changing her mind." This statement by Boone was a thinly veiled reference to Finn's protected conduct because the MOU entitled her to three different positions, the intervention/remediation and day-to-day substitute positions, which she was to hold for the remainder of the 2021-2022 school year, and the classroom teaching position, to which she was to return for the 2022-2023 school year. Boone readily conceded directly to the Union that the District's governing body had grown tired of Finn asserting her right to change positions, which had been collectively bargained for by the parties in the MOU. This is plain and direct evidence of unlawful motivation on behalf of the District, which occurred not long after Finn's protected activity. What is worse, the District failed to call Boone or any other School Board member to testify in this proceeding, and therefore, Ciavarella's account of these events stands unrefuted. As a result, I am compelled to draw an adverse inference that, if called, Boone

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<sup>12</sup> In reality, Finn was guilty of no wrongdoing even by Gregory's misguided standards, which Gregory herself eventually conceded. However, that must have been very little comfort to Finn who had to endure a profanity-laced diatribe in front of her colleagues.

<sup>13</sup> Although Gregory was not involved in the violation of the MOU, her conduct demonstrates how pervasive and multilayered the animus was at the District.

and/or the other School Board members would have corroborated and confirmed Ciavarella's testimony. The District has not offered any evidence by Boone to contradict his July 28, 2022 statements to Ciavarella, nor has the District presented testimony from any other School Board members to contradict the notion that Boone's statement was, in fact, true, i.e., that the School Board was tired of Finn because she was asserting her rights under a collectively bargained-for agreement to change positions.

Curiously, the District relies on the testimony of Principal Seyer in staking its claim that it had a legitimate business reason for keeping Finn in the intervention/remediation position for the 2022-2023 school year. But Seyer was only responsible for decisions regarding teacher assignments at Fairview. Thus, he did not consider any positions at Rice when he made that decision. In any event, Seyer hardly had the authority to overrule or question the decisions of the District's School Board, which admittedly refused to move Finn back to Rice because it was tired of her asserting her rights under the MOU. The record shows that Finn's former position at Rice was indeed vacant heading into the 2022-2023 school year. Yet the District decided to fill that position with a second-grade teacher, who was already at Rice, and to keep Finn in the intervention/remediation position at Fairview, without any explanation. Why the District did not place Finn in the now-vacant second-grade teaching position at Rice is also a mystery. As such, while there is no specific evidence of any animus or unlawful motivation on behalf of Seyer, his testimony is nevertheless unpersuasive in light of the critical admissions of Boone, which reveal the true motivation behind the District's conduct here. Accordingly, it must be concluded that the District also violated Section 1201(a) (3) of the Act.

Finally, the Association has also alleged an independent violation of Section 1201(a) (1) of the Act. The Board has held that an independent violation of Section 1201(a) (1) will be found if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employees have been shown in fact to have been coerced. Bellefonte Area School District, 36 PPER 135 (Proposed Decision and Order, 2005) (citing Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 1201(a) (1). Northwestern School District, *supra*. However, an employer does not violate Section 1201(a) (1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010) (citing Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

In this case, the Association has sustained its burden of proving an independent violation of Section 1201(a) (1). The District's refusal to return Finn to a classroom teaching position for the 2022-2023 school year, when coupled with Boone's indication that the School Board was tired of her, would clearly and unequivocally have a tendency to coerce employees, as would the continual berating by Principal Gregory. The record shows that the District did not have any legitimate reasons for this course of conduct. Thus, the message to the economically dependent employees is unmistakable, involve the Union or assert your rights under a collectively bargained-for MOU at your own peril. Accordingly, it must be concluded that the District also independently violated Section 1201(a) (1) of PERA. In light of the foregoing, the District will be directed to comply with the MOU by returning Finn to her previous sixth-grade classroom teaching position at Rice

Elementary effective with the start of the 2022-2023 school year and to make Finn whole for any and all lost wages and benefits incurred as a result of the District's unfair practices, together with six (6%) percent per annum interest, including but not limited, to any out of pocket medical expenses, pension contributions, and seniority.<sup>14</sup>

#### CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices in violation of Section 1201(a)(1), (3), and (5) 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 PERA;
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. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in the appropriate unit, including but not limited to discussing of grievances with the exclusiverepresentative.

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<sup>14</sup> Although the MOU does not specifically require that Finn be returned to her previous sixth-grade classroom teaching position at Rice Elementary for the 2022-2023 school year, it does require the District to return her to a permanent classroom teaching position nonetheless. The record demonstrates that Finn's previous sixth-grade classroom teaching position was vacant heading into the start of the 2022-2023 school year. And, the District has proffered no explanation whatsoever for why it filled that position with a second-grade teacher, who was already at Rice, instead of Finn. Likewise, the District has proffered pretextual reasons for why it did not return Finn to her previous position. Thus, the District violated Section 1201(a)(1), (3), and (5) of the Act by refusing to return Finn to her previous sixth-grade teaching position in violation of its bargaining obligation and in retaliation for her protected conduct.

4. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Immediately comply with the MOU by returning Keelin Finn to her previous sixth-grade classroom teaching position at Rice Elementary effective with the start of the 2022-2023 school year and to make Finn whole for any and all lost wages and benefits incurred as a result of the District's unfair practices, together with six (6%) percent per annum interest, including but not limited, to any out of pocket medical expenses, pension contributions, and seniority;

(b) 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 employees and have the same remain so posted for a period of ten (10) consecutive days;

(c) 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

(d) 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 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 from Harrisburg, Pennsylvania this 24<sup>th</sup> day of July, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak  
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CRESTWOOD EDUCATION ASSOCIATION, PSEA/NEA :  
v. : Case No. PERA-C-22-293-E  
CRESTWOOD SCHOOL DISTRICT :

**AFFIDAVIT OF COMPLIANCE**

Crestwood School District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1), (3), and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately complying with the MOU and returning Keelin Finn to her previous sixth-grade classroom teaching position at Rice Elementary effective with the start of the 2022-2023 school year and to make Finn whole for all lost wages and benefits incurred as a result of the District's unfair practices, together with six (6%) percent per annum interest, including but not limited, to any out of pocket medical expenses, pension contributions, and seniority; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a 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