

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

METHACTON EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-20-226-E
 :
METHACTON SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On September 23, 2020, the Methacton Education Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Methacton School District (District), alleging that the District violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA or Act) by stripping away the supplemental position of Equipment Manager from Christopher Lloyd at the start of the 2020-2021 school year in retaliation for his protected activity.

On November 2, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation and directing a hearing on May 3, 2021, if necessary.¹ By letter dated January 6, 2021, the hearing was continued indefinitely at the request of both parties to permit time for settlement discussions. On March 22, 2022, the Board Secretary issued a show cause letter, to which the Association replied on March 31, 2022, requesting that the hearing be rescheduled. The hearing was then rescheduled for July 13, 2022. The hearing was continued several more times at each party's request and without objection until both parties again requested that the matter be continued indefinitely pending further settlement efforts. On February 2, 2023, the Association requested that the matter be relisted for hearing, as settlement discussions were unsuccessful. By letter dated February 13, 2023, the hearing was rescheduled for April 19, 2023. After two more continuances at the request of the parties, the hearing eventually ensued on September 6, 2023, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on November 1, 2023. The District filed a post-hearing brief in support of its position on November 3, 2023.

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. (Joint Exhibit 1)²

¹ This of course occurred during the height of the Covid-19 pandemic when the Board was in the process of rescheduling many months of cancelled hearings, in addition to processing new charges.

² The parties submitted a series of joint stipulations of fact and exhibits at the hearing. The Joint Stipulation of Facts has been marked as Joint Exhibit 1, while the Joint Exhibits have been marked as Joint Exhibit 1(A) through 1(P) consistent with how the parties identified them.

2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (Joint Exhibit 1)

3. The Association is the exclusive bargaining representative for a unit of professional employes at the District. (Joint Exhibit 1, 1(A))

4. The Association and the District are parties to a collective bargaining agreement (CBA) effective July 1, 2020 to June 30, 2026. (Joint Exhibit 1, 1(A))

5. The District offers a variety of different supplemental pay position opportunities to all of its employes, and some of these opportunities are also open to any interested external applicants. (Joint Exhibit 1)

6. The District offers these supplemental pay position opportunities on a temporary, contractual basis, for a finite duration of time. The District's Administration has the right to evaluate supplemental pay position opportunities on an annual basis based upon the needs of the District and its students. (Joint Exhibit 1)

7. Christopher Lloyd is currently employed as a Technology Integration Specialist for the District and has been Co-President of the Association since 2018. Throughout his 29 years of employment with the District, Lloyd has held a number of supplemental pay positions, which are compensated pursuant to the CBA. (N.T. 20-23, 26; Joint Exhibit 1)

8. Lloyd testified that he also served as Building Representative for the Association in the late 1990s. He was part of the Association's negotiating team since the early 2000s and served as Vice President from the early 2000s until he became Co-President in 2018. He described being at the bargaining table for every negotiation following the 1999 contract. Lloyd testified that he was involved with a number of grievances over the years, including one in 2017 regarding the high school schedule, which forced the District to make changes. He also indicated that he participated in a strike in the fall of 2018, during which he served as Strike Coordinator for the Association, which included heavy involvement with organization, negotiations, and ultimately factfinding. He described the climate with the District's Administration and School Board members at that time as "very adversarial" and "heated." (N.T. 22-24, 31-34, 48)

9. Lloyd served in the supplemental pay position of "Equipment Manager" for each of the District's athletic seasons, commencing at the start of the 2014-2015 athletic season and concluding at the end of the 2019-2020 athletic season. He explained that he was not required to reapply at the end of each school year. Instead, he described how it was just assumed that the position was his from year to year until he notified the District that he did not wish to do it any longer. He testified that, aside from the Equipment Manager position, the District never told him that the District did not want him to return to any of the other supplemental positions he has held. (N.T. 28-29; Joint Exhibit 1)

10. Prior to the 2018-2019 athletic season, the District's High School athletic program was managed by both the High School Assistant Principal, who served as the Director of Athletics and Activities, and the Equipment Manager, who assisted the Director of Athletics and Activities. (Joint Exhibit 1)

11. At the beginning of the 2018-2019 school year, the District restructured the Director of Athletics and Activities position to include additional Assistant Principal duties for the District's High School. (Joint Exhibit 1)

12. For the beginning of the 2019-2020 school year, the District again expanded the Assistant Principal for Athletics and Activities position to take on even more Principal duties, specifically those of a "House Principal" for a particular grade level. (N.T. 34, 88-89, 104-105; Joint Exhibit 1)

13. To assist the Assistant Principal for Athletics and Activities, the District unilaterally created another position in the summer of 2019, the Events Supervisor, whose job was to take on some of the duties previously handled by the Assistant Principal for Athletics and Activities. This new position was not negotiated, nor was it contained in the CBA. Paul Spiewak was the individual holding the Assistant Principal for Athletics and Activities position, while Joe Boxman held the Events Supervisor position. (N.T. 34, 55-56, 73-74, 88-91; Joint Exhibit 1)

14. With this change, beginning in the 2019-2020 school year, the High School's athletic program was managed by three individuals: the Assistant Principal for Athletics and Activities, Paul Spiewak, the Equipment Manager, Christopher Lloyd, and the Events Supervisor, Joe Boxman. (Joint Exhibit 1)

15. As Equipment Manager, Lloyd was responsible for overseeing inventory of equipment and uniforms for each of the District's athletic teams, including during the teams' off-seasons. On a granular level, the Equipment Manager was responsible for managing deliveries of team equipment, collecting equipment and uniforms at the conclusion of a team's season, reconditioning or replacing any equipment, as necessary, and putting equipment and uniforms into storage. (Joint Exhibit 1)

16. The Events Supervisor was responsible for attending all team sporting events and providing support to student athletes, as necessary. The Events Supervisor supplemental pay position was not held by a bargaining unit employee. (Joint Exhibit 1)

17. The Events Supervisor position earned a stipend of \$10,000 for each of the three athletic seasons that occurred during the 2019-2020 school year, totaling \$30,000 for the entire school year. (Joint Exhibit 1)

18. The Equipment Manager and Events Supervisor provided support to and were supervised by the Assistant Principal for Athletics and Activities. (Joint Exhibit 1)

19. Over the course of the 2019-2020 school year, the District's Administration became aware that duties of the combined Assistant Principal for Athletics and Activities position were too much for one person to handle. For instance, Spiewak was regularly working as early as 7:00 a.m. and as late as 10:00 p.m. on school days and also working on Saturdays. As a result, the District removed the "House Principal" duties from the position after the 2019-2020 school year, so that Spiewak could focus solely on serving as the Director of Athletics and Activities, as the role of the position existed

prior to the 2018-2019 school year. (N.T. 68-70, 90-92, 94-96, 106-108; Joint Exhibit 1)

20. Having determined that with the "House Principal" duties removed, the Director of Athletics and Activities had the capacity to handle the responsibilities of both the Equipment Manager and the Events Supervisor during the 2020-2021 school year, the District's Administration planned to eliminate both the Equipment Manager and Events Supervisor positions. The District's Human Resources Director, Che Regina, testified that he made the decision to eliminate the Equipment Manager and Events Supervisor positions, in consultation with the District's High School Principal, Jason Sorgini. Regina indicated that he made the recommendation to eliminate those positions without any direction from the Superintendent or Business Manager, who Lloyd believed to be targeting him. The Superintendent simply approved the changes. (N.T. 68-71, 79, 97, 109-110; Joint Exhibit 1)³

21. After the 2019-2020 athletic season, the District eliminated the Equipment Manager supplemental pay position. The Equipment Manager position remained on the comprehensive list of all potentially available supplemental positions in the CBA, thereby providing the District with the opportunity to reinstate the position in the future, should the need for the position arise. Regina testified that the Equipment Manager position was eliminated effective July 1, 2020. (N.T. 77-78, 84-85, 97; Joint Exhibit 1, 1(K))

22. Regina testified that Lloyd's protected activities as Co-President of the Association did not play any role in his recommendation to eliminate the Equipment Manager and Events Supervisor positions. He described having a strong working relationship with Lloyd wherein they have each worked hard to change the dynamics of a District that has seen significantly fewer grievances since they both assumed leadership positions. Sorgini likewise testified that Lloyd's Union status and activities did not play any role in the recommendation to eliminate the Equipment Manager position. (N.T. 79-80, 109)

23. For the 2019-2020 athletic season, Lloyd earned a stipend of \$7,332.36 for serving as the District's Equipment Manager. (Joint Exhibit 1)

24. During the 2019-2020 school year, in addition to serving as the District's Equipment Manager, Lloyd held seven supplemental pay positions: Auditorium Director; Advisor of the Yearbook 1 Club; Instructional Software Support Specialist; Practical Arts Co-Coordinator for Grades 9-12; Assistant Coach of the Golf Team for the Fall Season and Extended Season; and Assistant Coach of the Wrestling Team for the Winter and Extended Season. Lloyd also served as the Curriculum Review Advisor for Business, Technical Education, and Family and Consumer Sciences. (Joint Exhibit 1)

25. For the 2019-2020 school year, Lloyd received stipends for these supplemental pay positions totaling \$27,026.86, excluding his stipend of \$7,332.36 for serving as the District's Equipment Manager. (Joint Exhibit 1)

26. Lloyd testified that Paul Spiewak, who was the Director of Athletics and Activities, notified Lloyd that the Equipment Manager position had been eliminated in June or July of 2020. (N.T. 41-42)

³ The record shows that both Regina and Sorgini have since been promoted to Assistant Superintendent for Education and Assistant Superintendent for Operational Services, respectively. (N.T. 66-69, 104).

27. In the spring of 2020, due to the onset of the Covid-19 pandemic and the resulting realities of virtual instruction, the District's Business Manager directed the Administration to evaluate all supplemental pay positions and voluntary, short-term compensated positions District-wide to effectuate cost-savings during the pandemic. Specifically, the Business Manager directed the Administration to eliminate ten percent of the District's budget for supplemental pay positions and voluntary, short-term compensated positions. (Joint Exhibit 1)

28. Having already planned to eliminate the Equipment Manager and Events Supervisor positions, the District's Administration included those positions in the directed ten percent reduction of all supplemental pay positions. (N.T. 71; Joint Exhibit 1)

29. Neither the Equipment Manager, nor the Events Supervisor positions have been reinstated as their duties continue to be performed by the Director of Athletics and Activities, Paul Spiewak. (Joint Exhibit 1)

30. In addition to eliminating the Equipment Manager and Events Supervisor positions for the 2020-2021 school year, the District eliminated 26 other voluntary, short-term compensated positions, including those held by bargaining unit members, as follows:

- a. Four Summer Elementary School Library positions: employees who were responsible for cataloguing and processing new materials, rearranging shelves and similar duties.
- b. Four Elementary School Art positions: employees who were responsible for completing inventory, unpacking and distributing art supplies to building teachers.
- c. One Summer Skyview Upper Elementary School Library position: an employee who was responsible for the input of student information, collating and updating collection information.
- d. One Summer Skyview Upper Elementary School Art position: an employee who was responsible for the coordination of inventory of supplies.
- e. One Summer Arcola Intermediate School Family and Consumer Science position: an employee who was responsible for the preparation of the Child Development Lab, Inc. enrollment of preschool students and similar duties.
- f. One Summer Arcola Intermediate School Library position: an employee who was responsible for the input of student information, collating and updating collection information.
- g. One Summer High School Library position: an employee who was responsible for cataloguing and processing new materials, purchase order process, updating ACCESS-PA database and similar duties.
- h. One Summer High School Library position: an employee who was responsible for budget items.
- i. Four Summer High School Art positions: employees who were responsible for creating proper student storage for mass art supplies, inventory ordered for art items from bid lists, and properly stocking all art shelves/drawers.
- j. Seven Summer Pre-K Jump Start Program positions: employees who were responsible for running a program for incoming Kindergarteners for a five-week period from July to August.

- k. One Summer Gifted Students Coordinator: an employe who assisted with scheduling students into the Gifted Seminar.

(Joint Exhibit 1)

31. None of these eliminated positions listed directly above have been reinstated as they are not necessary for the District's current operational needs. (Joint Exhibit 1)

32. As part of the District's ten percent reduction of its supplemental positions budget, the District also eliminated three positions for the summer of 2020, which included the following:

- a. One Extended School Year Nurse position: a nurse servicing the District's Extended School Year Program.
- b. One Summer English Language Development Program Teacher: an employe running the Summer Enrichment Program for English Language Development students.
- c. One Summer English Language Development Program Instructional Assistant: an employe who assisted with the Summer Enrichment Program for English Language Development students.

(Joint Exhibit 1)

33. All of these positions listed directly above have since been reinstated in accordance with the District's operational needs. (Joint Exhibit 1)

34. During the 2020-2021 school year, Lloyd held six supplemental pay positions: Auditorium Director; Advisor of the Yearbook 1 Club; Instructional Software Support Specialist; Practical Arts Coordinator for Grades 9-12; Assistant Coach of the Golf Team; and Assistant Coach of the Wrestling Team, receiving stipends totaling \$24,649.20. (Joint Exhibit 1)

35. During the 2021-2022 school year, Lloyd held seven supplemental pay positions: Auditorium Director; Advisor of the Yearbook 1 Club; Instructional Software Support Specialist; Practical Arts Coordinator for Grades 9-12; Assistant Coach of the Golf Team and for the Extended Season; and Assistant Coach of the Wrestling Team for the Winter and Extended Season. Lloyd also served as the Curriculum Review Advisor for Business, Technical Education, and Family and Consumer Sciences, and received stipends totaling \$27,119.76 for these positions. (Joint Exhibit 1)

36. During the 2022-2023 school year, Lloyd held six supplemental pay positions: Auditorium Director; Advisor of the Yearbook 1 Club; Instructional Software Support Specialist; Practical Arts Coordinator for Grades 9-12; and Assistant Coach of the Golf Team for the Spring and for the Extended Season. Lloyd also served as the Curriculum Review Advisor for Business, Technical Education, and Family and Consumer Sciences, and received stipends totaling \$19,598.64 for these positions. (Joint Exhibit 1)

DISCUSSION

The Association has alleged that the District violated Section 1201(a)(1) and (3) of the Act⁴ by stripping away the supplemental position of Equipment Manager from Christopher Lloyd at the start of the 2020-2021 school year in retaliation for his protected activity. The Association also contends that the District has independently violated Section 1201(a)(1) of the Act because the District's conduct related to Lloyd would tend to interfere with or coerce bargaining unit members in the exercise of their rights under the Act. The District, meanwhile, submits that the charge should be dismissed because the Association failed to sustain its burden of proving unlawful motivation on behalf of the District. Instead, the District maintains that it had legitimate nondiscriminatory reasons for its actions. The District also asserts that its actions would not have a tendency to interfere with or coerce employees in the exercise of their rights.

In a Section 1201(a)(3) discrimination claim, the Complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew the employee engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employee'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, 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

⁴ 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 employee organization... 43 P.S. § 1101.1201.

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).

In this case, the Association has met its burden of establishing the first two prongs of the Section 1201(a)(3) test. The record shows that Lloyd has been engaging in protected conduct for many years, including service in multiple Union leadership positions, negotiating contracts, filing grievances, and participating in a strike, which ultimately proceeded to factfinding. This is clearly protected concerted activity under the Act. Likewise, the record shows that the District had knowledge of Lloyd's protected activity, as the District concedes in its post-hearing brief. (See District's brief at p. 17). In fact, the District does not dispute either of the first two prongs of the test for discrimination in its post-hearing brief. (See District's brief at p. 17). As a result, the issue in this case hinges on whether the District was motivated by Lloyd's protected activity in connection with its decision to eliminate or not fill the Equipment Manager position, which was implemented on July 1, 2020.

The Association has not sustained its burden of proving the third and final element of the discrimination test under Section 1201(a)(3) of the Act. In its post-hearing brief, the Association does not point to any direct evidence of anti-union animus.⁵ Rather, in support of its contention that the District retaliated against Lloyd for his protected conduct, the Association identifies a number of factors, which allegedly support an inference of unlawful motive on behalf of the District. Specifically, the Association relies on Lloyd's long history of zealous advocacy for the Union, at least part of which occurred during an adversarial relationship with the District in connection with the recent strike. In addition, the Association posits that Lloyd was the victim of disparate treatment, as compared to similarly situated employees, since he was the only bargaining unit member to lose a "co-curricular position." In this vein, the Association acknowledges that the District was trying to cut costs in light of the Covid-19 pandemic, however, the Association submits that Lloyd was the only bargaining unit member to lose his supplemental position, which evidences an effort to punish him for his protected conduct. Anticipating an argument by the District that the decision to eliminate the Equipment Manager position was purely financial, the Association further contends that the elimination of the Equipment Manager position, which paid \$7,332.36 in the 2019-2020 school year, represented a mere 11 percent of the overall reduction, for which the District was striving.^{6 7}

⁵ Indeed, the record is devoid of any such direct evidence of unlawful motive.

⁶ The Association extrapolates this figure based on Joint Exhibit 1(L), which ostensibly shows that the District cut a total amount of \$64,320.72 to meet the threshold 10 percent reduction for supplemental pay positions and voluntary, short-term compensated positions, espoused by the Business Manager in the spring of 2020.

⁷ While the Association concedes that the District has the right to annually evaluate supplemental pay positions, which are offered on a temporary, contractual basis, for a finite duration of time, the Association notes that, what may otherwise be a permissible employment action, becomes unlawful if it was motivated by anti-union animus. Of course, the Board has long held that a public employer's managerial prerogative does not insulate it from the

Unfortunately for the Association, however, the District has presented credible and compelling evidence that it decided to eliminate or not fill the Equipment Manger position for legitimate, nondiscriminatory reasons, and not because of Lloyd's protected activity. As the District argues in its post-hearing brief, the record shows that the District's decision to eliminate or not fill the Equipment Manager position following the 2019-2020 school year was primarily motivated by the need to alleviate Paul Spiewak's overwhelming workload as Assistant Principal for Athletics and Activities, while at the same time partially addressing the District's financial need to cut costs during the heart of the Covid-19 pandemic. To that end, the parties stipulated that over the course of the 2019-2020 school year, the District became aware that the duties of the newly combined Assistant Principal for Athletics and Activities position were too much for one person to handle.⁸ Spiewak certainly corroborated this evidence credibly and persuasively during his testimony at the hearing. As a result, the District removed the expanded "House Principal" duties from Spiewak at the conclusion of the 2019-2020 school year, so that Spiewak could focus solely on his duties as the Director of Athletics and Activities, as the role existed prior to the 2018-2019 school year.

Having determined that with the "House Principal" duties removed, Spiewak had the capacity as the Director of Athletics and Activities to handle the responsibilities of both the Equipment Manager and the Events Supervisor during the 2020-2021 school year, the District's Administration planned to eliminate both the Equipment Manager and Events Supervisor positions. The District's Human Resources Director, Che Regina, testified credibly that he made the decision to eliminate the Equipment Manager and Events Supervisor positions, in consultation with the District's High School Principal, Jason Sorgini. Regina did not begin his employment with the District until July 2018, which was after the strike had occurred. (N.T. 67, 72).⁹ Indeed, Regina testified credibly and persuasively that Lloyd's protected activities as Co-President of the Association did not play any role in his recommendation to eliminate the Equipment Manager and Events Supervisor positions. He convincingly described having a strong working relationship with Lloyd wherein they have each worked hard to change the dynamics of a District that has seen significantly fewer grievances since

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.

⁸ This occurred after the District had unwisely expanded Spiewak's role in that regard for the 2018-2019 and 2019-2020 school years.

⁹ There is a conflict in the evidence on this point. Lloyd testified that the strike occurred in the fall of 2018, while Regina indicated that he began working for the District in July 2018, which was after the strike. Although Lloyd's testimony was generally credible, the testimony of Regina on this point has been specifically credited. Thus, the credible evidence establishes that the strike probably occurred the year prior, in the fall of 2017 then.

they both assumed leadership positions. Sorgini likewise testified credibly that Lloyd's Union status and activities did not play any role in the recommendation to eliminate the Equipment Manager position.

Nor does it matter that Lloyd was the only bargaining unit employe to lose a supplemental position after the 2019-2020 school year, as alleged by the Association. Despite this fact, the record shows that, in addition to eliminating the Equipment Manager and Events Supervisor positions for the 2020-2021 school year, the District eliminated 26 other voluntary, short-term compensated positions including those held by bargaining unit employes. On these facts, then, I am unable to discern any disparate treatment or unlawful motive on behalf of the District. And, even though Lloyd's Equipment Manager position purportedly constituted a mere 11 percent of the Business Manager's targeted threshold ten percent overall reduction in supplemental pay positions and voluntary, short-term compensated positions, the record shows that many of the other positions, which were also cut, constituted much less of that overall figure according to Joint Exhibit 1(L). What is more, the District did not act to remove or strip away any of Lloyd's seven other supplemental positions following the 2019-2020 school year or at any time thereafter. To the contrary, the record demonstrates that Lloyd continued to hold most, if not all, of those positions on a yearly basis, which significantly increased his earnings. In any event, as previously set forth above, the District's financial savings, that ensued as a result of eliminating the Equipment Manager and Events Supervisor positions, was simply a secondary benefit to its primary motivation, which was convincingly demonstrated to be the District's obvious need to alleviate the burdens on Spiewak, who was simultaneously holding academic and athletic administrator duties. As such, the charge under Section 1201(a)(3) of the Act must be dismissed.

The Association also contends that the District independently violated Section 1201(a)(1) of the Act because any reasonable Association member would view Lloyd's loss of the Equipment Manager position as a demonstration of power and assume that participation in protected activity would cost him or her a supplemental pay position. 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 employes 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 employe 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)).

Here, the Association has not sustained its burden of proving that the District committed an independent violation of Section 1201(a)(1) of the Act. First of all, the record shows that the District clearly had a legitimate reason for eliminating or not filling the Equipment Manager position following the 2019-2020 school year. As indicated above, the District was primarily motivated by the need to alleviate Spiewak's overwhelming workload as Assistant Principal for Athletics and Activities, while at the same time partially addressing the District's financial need to cut costs during the

heart of the Covid-19 pandemic. In eliminating and/or not filling the Equipment Manager position, the District took the same action with regard to the non-bargaining unit Events Supervisor position, which paid \$30,000 or approximately four times the value of the Equipment Manager position, since Spiewak would now be able to perform the duties of both positions going forward. Further, Lloyd was permitted to retain all of his many other supplemental pay positions, which enabled him to significantly increase his yearly earnings in the face of across-the-board cuts. Accordingly, it must be concluded that a reasonable employe would not be coerced in exercising his or her Article IV rights and that the District's legitimate reasons justifiably outweigh any concerns over the potential interference with the same. Therefore, the charge under Section 1201(a)(1) will also be dismissed.

CONCLUSIONS

The hearing 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 not committed unfair practices in violation of Section 1201(a)(1) or (3) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded, and the charge is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 9th day of January, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner