

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE UNIVERSITY GRADUATE STUDENTS	:	
ASSOCIATION AFT LOCAL 6290	:	
	:	
v.	:	CASE NO. PERA-C-24-119-E
	:	
TEMPLE UNIVERSITY	:	

PROPOSED DECISION AND ORDER

On May 24, 2024, the Temple University Graduate Students Association AFT Local 6290 (Union or TUGSA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Temple University (Temple or University) violated Section 1201(a)(1) and (3) of the Public Employe Relations Act (Act or PERA). The Union specifically alleges that, on January 24, 2024, the University informed graduate student playwrights Jolie London Glickman (Ms. Glickman) and Peter Chansky (Mr. Chansky) that they would no longer have a full production of their thesis plays "due to everything that happened during the strike." The Union further alleges that this action constituted an unlawful interference with Article IV rights and an independent violation of Section 1201(a)(1), as well as unlawfully motivated retaliation in violation of Section 1201(a)(3).

On June 10, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of October 9, 2024, in Harrisburg. The hearing was continued at the request of the Union and rescheduled for October 30, 2024. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present testimony, admit documents, and cross-examine witnesses. On December 23, 2024, the Union filed its post-hearing brief. The University filed its post-hearing brief on February 10, 2025.

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

FINDINGS OF FACT

1. The University is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6-7)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)

3. Fred Duer is the Chair of the Theater Department (Department) in the School of Theater, Film and Media Arts at Temple, and he is also the Head of the Design Area. As the Department Chair, Professor Duer manages and schedules classes, hires adjuncts and faculty, and develops and manages production budgets. He is a supervisor of Teaching Assistants and makes the teaching assignments for Teaching Assistants. (N.T. 103-105; ERX-1; ERX-4)

4. Jenny Stafford is a professor who teaches classes in the Department. She is also the Department's Head of Playwriting and a supervisor of Teaching Assistants in the Department. (N.T. 42-43; ERX-1; ERX-4)

5. Ms. Glickman has been a Teaching Assistant at Temple since the fall of 2022, when she began matriculating in the University's Master of Fine Arts (MFA) program in playwriting. The 2024-2025 academic year is her third and final year. She will graduate with her terminal MFA degree in the spring of 2025. In her capacity as a Teaching Assistant, Ms. Glickman is a public employee within the meaning of Section 301(2) of PERA. (N.T. 21-22)

6. Ms. Glickman is a member of the TUGSA Executive Board, and she holds the elected position of Director of Community Outreach. She has held this position since the end of the spring 2024 semester. Ms. Glickman's thesis play is called *Poker in a House with Women*. (N.T. 24-25, 56; UX-3)

7. Mr. Chansky has been a Teaching Assistant in the TUGSA bargaining unit at Temple since the fall of 2022, when he began matriculating in the University's MFA program in playwriting. The 2024-2025 academic year is his third and final year. He will graduate with his terminal MFA degree in the spring of 2025. His thesis play is called *Earth Logic*. In his capacity as a Teaching Assistant, Mr. Chansky is a public employee within the meaning of Section 301(2) of PERA. (N.T. 78-81; UX-3)

8. Ontaria Wilson is a graduate student director who directed the play: *If Pretty Hurts*, for stage performances in October 2024. Taylor Harlow is a graduate student who is directing the play: *Our Country is Good*, for stage performances in February 2025. (N.T. 39-40; UX-3)

9. The MFA in Theater is currently a 10-student cohort program. All 10 students started the MFA program together, and they will graduate together at the end of the 2024-2025 academic year. (N.T. 22-23, 46)

10. Department Chair Duer developed the cohort program at Temple, which did not exist before the current cohort, and which began in the fall of 2022. There have been no students admitted into the cohort program after the fall of 2022. The playwright MFA at Temple had been a "sporadic" program. Some previous MFA playwright students received full productions with actual props, sets, and furnishings. Those full productions shared sets for performances on different nights. (N.T. 105-106, 118-119)

11. During the first 2 years of the program, the 10 cohorts had classes together in various disciplines. Among the 10 cohorts are 2 playwrights, Ms. Glickman and Mr. Chansky, and 2 directors, Taylor Harlow and Ontaria Wilson. The remaining 6 cohorts are also involved in Theater Collaboration. (N.T. 22-24)

12. All 10 cohorts are Teaching Assistants in the TUGSA bargaining unit. One of the cohorts did not teach during the fall 2024 semester. There are approximately 600 employees in the TUGSA bargaining unit. (N.T. 23-25)

13. The published Temple Bulletin provides that the culminating event for graduating with an MFA in playwriting is the student's full-length thesis play. A "full production" of the student playwright's play is not required for the MFA in playwriting. Directing a full production is required for an MFA in directing. A full production is not a condition of employment for the student playwrights as Teaching Assistants, who are paid to teach, not to write. A full production involves the stage management of students, faculty, and staff to design sets, lighting, costumes, and sound. (N.T. 25-28, 59, 68-69, 80, 107-108; UX-1)

14. Before entering the MFA program at Temple for the fall semester of 2022, Department Chair Duer told Ms. Glickman that, if she was accepted into the program, she would receive a full production of her thesis play. This representation is the main reason why Ms. Glickman was interested in Temple. She was not interested in going through a program that did not culminate in the full production of her thesis play. (N.T. 29-31)

15. At the time Mr. Chansky was applying to the MFA playwriting program at Temple, he was also considering MFA programs at other universities. During an interview, Department Chair Duer informed Mr. Chansky that, if he was accepted into the program, his thesis play would be presented as a full production at Temple. Mr. Chansky understood that his thesis play would be fully produced when he started the MFA program in the fall of 2022. (N.T. 80-81)

16. Ms. Glickman credibly testified that she would not have gone to an MFA program if her thesis play was not getting a full production. She testified that playwrights write plays for the purpose of having them fully realized and shown on stage. Ms. Glickman has been spending her time in the program writing stage directions into her play that will have no meaning without seeing the performance under a full production. She wanted to see actors move through the world that she created. A full production would allow Ms. Glickman to learn how certain staging elements work and how the audience responds to them. For example, an actor slamming a real door has a different effect on the audience than the actor going behind a curtain. A workshop production does not provide a full representation of the play. Without the necessary props, the workshop production deprives audience members of a chance to fully comprehend the play because they may not understand what the block props represent. (N.T. 51-53)

17. During Ms. Glickman's time in the MFA program, the full production of her play was repeatedly discussed and referenced during her playwriting classes with the head of playwriting, Professor Stafford, and the tech students, who design the sets. These discussions made Ms. Glickman think about the potential stage sets and props for her play. For example, she did not want to include a swimming pool in her play because it was not a reasonable set production at Temple. (N.T. 32, 35 84)

18. Mr. Chansky also credibly testified that many conversations that he had with Professor Stafford were geared around the knowledge that his and Ms. Glickman's thesis plays would receive full productions. (N.T. 81)

19. Mr. Chansky credibly testified that a full production is important because the competitive nature of the business makes getting a full production at a theater difficult and requires talent and luck. To get a theater to fully produce a play at any stage of a playwright's career is rare. Obtaining a full production while in graduate school was a big selling point for Mr. Chansky to accept Temple's offer of admission into the MFA program. (N.T. 82-83)

20. Mr. Chansky plans on working with Philadelphia theater companies after graduation. A full production of his thesis play would provide an opportunity to invite representatives from area theater to showcase his work. The workshop production of his play will be confusing and unclear. (N.T. 92-93)

21. Mr. Chansky further testified that his thesis play requires an elaborate stage set and costuming including astronaut suits and a spaceship. Seeing his play fully realized is important to the story which would be better served with a full production. Mr. Chansky received acceptance offers from other schools that did not offer full productions, and the full-production offer from Temple was a "huge" reason why he chose Temple. (N.T. 82-83, 92-93)

22. From the end of January 2023 into March 2023, bargaining unit Teaching Assistants employed by Temple engaged in a strike. Mr. Chansky and Ms. Glickman participated in the strike. Three Musical Theater MFA students also engaged in the strike as Teaching Assistants. Student director Taylor Harlow engaged in the strike as a Teaching Assistant. Student director Ontarioa Wilson did not engage in the strike as a Teaching Assistant. At the time, Ms. Glickman and Ms. Wilson were in a class together taught by Professor Stafford. (N.T. 42-43, 73, 81-82, 98)

23. During the third week of the strike, Ms. Glickman had an interaction with Ms. Wilson "that did not go well." Ms. Glickman wrote a letter to convince non-striking MFA students in the cohort to join the strike. The letter was addressed to everyone in the cohort and not individuals, but she gave it to only 2 students. The letter indicated that non-strikers were standing in opposition to consequential theater. Ms. Glickman gave the letter to Ms. Wilson, who was offended by the letter, and Ms. Glickman did not continue to give the letter to the remaining non-striking students. Ms. Glickman told Professor Stafford that she would still work with Ms. Wilson to which Professor Stafford replied: "she will not work with you." (N.T. 42-45, 66)

24. Both student directors are required to direct a full production to graduate. Ms. Wilson and Mr. Harlow both directed full productions last academic year. Both student directors chose which plays that they wanted to direct this year and last year. They cast the actors for the production of the plays. They had full sets and full costuming, and they had a full rehearsal period. Both student directors are directing 2 more full productions this academic year. (N.T. 45-46, 95-96; UX-2)

25. On October 24, 2023, Mr. Chansky met with Department Chair Duer at which time Professor Duer told Mr. Chansky that he and Ms. Glickman would be getting a full production of their thesis plays directed by a faculty member. Mr. Chansky did not care who would be directing his thesis play. (N.T. 81-82)

26. Later in the fall of 2023, Ms. Glickman met with Department Chair Duer to compliment a tech student's thesis set design for another Temple play that she had seen and to inquire whether a tech student would be doing a thesis set design for her play production. During that meeting, Professor Duer informed Ms. Glickman that her thesis play would not receive a full production and, instead, would receive a "workshop" production with representational boxes and costumes, rather than real props. Student actors would provide their own costumes. At that moment, Ms. Glickman felt a fundamental loss and left the meeting. On November 29, 2023, Ms. Glickman texted Mr. Chansky that Professor Duer had just informed her that they were not getting full productions of their thesis plays. (N.T. 34-36, 84-86)

27. A workshop production uses wooden blocks and benches, undergraduate student actors, student provided costumes, and a short

rehearsal period, which is approximately 3 weeks. The actors in a workshop production follow stage directions as best they can without realistic props, costumes, and sets. There are 12 planned plays and musical productions for the 24-25 academic year, beginning in September 2024, and ending at the end of April 2025. (N.T. 36-39, 71-72; UX-3)

28. Temple produces non-student plays. Six of the 12 productions for the 24-25 academic year are student thesis plays. Of the 6 student playwrights, Ms. Glickman and Mr. Chansky were the only 2 that engaged in the strike. Ms. Glickman is currently working with a faculty director named Amina Robinson for the workshop production of her thesis play. Mr. Chansky is working with the faculty Head of Directing Marcus Giamatti for the workshop production of his thesis play for which "minimal" props are available. (N.T. 49-51, 71-74, 86-89; UX-3)

29. On January 24, 2024, Ms. Glickman and Mr. Chansky met with the head of playwriting, Professor Stafford, to learn the reason why Professors Duer and Stafford would not give them a full production. Professor Stafford informed them that they could not work with the student directors because of everything that happened with the strike. The Department decided that Ms. Wilson and Mr. Harlow, the 2 student directors, would direct 2 full productions and that faculty directors would direct workshop productions of the 2 thesis plays of Ms. Glickman and Mr. Chansky, thereby increasing the student playwright and student director productions from 2 to 4. Ms. Stafford told Ms. Glickman and Mr. Chansky that the Department did not have money for 4 full productions. Ms. Glickman is unsure why the 2 student directors get to direct 2 more full productions this year. Mr. Chansky did not have any uncomfortable interactions with Ms. Wilson or any non-striking student Teaching Assistants in the cohort. (N.T. 41-42, 44-45, 48, 84, 89-90, 96, 121-122)

30. On February 6, 2024, and February 20, 2024, Mr. Chansky met with Professor Duer. During the February 6, 2024 meeting, Professor Duer informed Mr. Chansky that he and Ms. Glickman would not be getting full productions because of the higher salaries that Teaching Assistants received as a result of the strike and that there was no longer enough money in the budget for the full productions of their thesis plays. The Theater Department at Temple is financing the full production of other plays. (N.T. 84-86; UX-3)

31. At the hearing, Department Chair Duer testified that, after receiving complaints about tensions between students in the cohort over participation in the strike, he decided that, although he could have, he would not force students in the cohort to work together because such collaboration would not be conducive for artistic productions if 2 students are not agreeing. He testified that he did not believe that he could have the student directors direct the student playwrights' plays because of the fracture in the cohort. With that decision, 2 productions became 4 and that many productions could not be planned, designed, rehearsed, and coordinated for full productions. He decided on workshop productions for the 2 student thesis plays. There is no evidence that Taylor Harlow had any issues with either Mr. Chansky or Ms. Glickman. (N.T. 108-110, 121-122, 125-126)

32. Professor Duer testified that he did not envision the 2 playwrights and the 2 directors working on separate full productions; rather the student directors and student playwrights would work together on full productions of the student playwrights' thesis plays. (N.T. 106-107)

33. At some point, the Union filed separate grievances on behalf of Ms. Glickman and Mr. Chansky regarding the change from full production of their thesis plays to workshop productions. Dr. Kimmika Williams-Witherspoon is the Senior Associate Dean of Strategic Initiatives and Innovation at the Center for Performing and Cinematic Arts. After a step-1 grievance hearing was held on March 15, 2024, Dr. Williams-Witherspoon denied the grievances on March 20, 2024. (N.T. 46, 57-58, 91; ERX-3)

34. In both of her grievance denial letters, Dr. Williams-Witherspoon explained the following:

The Grievant was never guaranteed [she/he] would have a full production: thus, [she/he] was never "removed[]" [from a full production.] Having a full production is not provided in the Grievant's contract with the department nor the Graduate Bulletin. While a production is a final product of other programs, the only expectation for a playwright is the graduate thesis as a completed full-length play. I am most familiar with this, as I am a graduate of the MFA playwrighting program. I never received a full production for my thesis project and neither did any of my cohorts.

(ERX-3)

DISCUSSION

The Union contends that the University's refusal to provide Ms. Glickman and Mr. Chansky a full production of their thesis plays was in retaliation for their participation in a lawful strike in the Spring of 2023, in violation of Section 1201(a)(1) and (3) of the Act. The Union further maintains that said refusal independently has a tendency to coerce employees in the exercise of protected rights under Article IV of the Act, in violation of Section 1201(a)(1) of the Act. (Union Brief at 7-14).

During its opening statement at the hearing, the University posited that the Union's claims relate solely to the student status of Mr. Chansky and Ms. Glickman and there are no allegations that anything interfered with their work as Teaching Assistants or their employment. The University subsequently reiterated this argument in its brief and posited that the Board lacks jurisdiction over the allegations because they relate entirely to academic matters and the University did not retaliate with employee discipline or other action because of the lawful strike. (Temple Brief at 15-16). Temple also contends that even if the Union could establish a prima facie case, the University actions rest on legitimate reasons unrelated to the strike. (N.T. 13, 18; Temple Brief at 1-3).

Temple points out that the Teaching Assistants' employment is distinct from their student status, that the playwrighting students are not required to have a full production of their plays, that Temple never intended to fully produce the student plays independent of the student directors, and that play production is purely an academic matter. (Temple Brief at 6-7). To further emphasize the employment-student distinction, Temple contends that the collective bargaining agreement (CBA) between the Union and the University only addresses terms and conditions of employment and explicitly provides that academic matters are outside the scope of the CBA. (Temple Brief at 7-8). The Complainants, argues Temple, are not entitled to the protections of PERA in their capacity as students. (Temple Brief at 10-14).

Temple also maintains that the Theater Department decided on workshop productions for Ms. Glickman and Mr. Chansky because the Department heads decided not to require Mr. Harlow and Ms. Wilson to direct their plays because of the tension between the students as a result of the strike, which would not be conducive for properly performing their artistic tasks. With the student directors having to direct full productions to graduate, 2 full productions would become 4 full productions which was not contemplated by the Theater Department. The student directors and not the Department heads chose which plays they would direct and they did not choose Mr. Chansky's or Ms. Glickman's plays, creating a logistics problem for the Department. (Temple Brief at 9-10). Temple also contends that the Board has no basis or jurisdiction to grant full productions for Mr. Chansky and Ms. Glickman because there is no statutory violation and because there is no precedent for doing so where the claimed unfair practice is against an individual in a non-employee capacity. (Temple Brief at 19-21).

Section 1201 of PERA provides, in relevant part, as follows: "(a) Public employers, their agents or representatives are prohibited from: (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(a)(3). The Board and the courts have consistently held that a complainant alleging a violation of Section 1201(a)(3) has the burden of establishing that the employee(s) engaged in protected activity, that the employer knew of that activity and that the employer took adverse employment action that was motivated by the employee's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

The Board has jurisdiction to determine whether the required elements of a discrimination claim under Section 1201(a)(3) have been properly pleaded and established on the record. Therefore, the University's argument that this Board lacks jurisdiction to evaluate the Complainant's discrimination claims is hereby dismissed. However, the University's assertion, that there are no allegations that any conduct interfered with or affected Mr. Chansky's and Ms. Glickman's employment status, is in the nature of a demurrer based on the pleadings. As such, the Board and its examiners assume that the allegations in the specification of charges are true. A demurrer will be sustained when it appears with certainty that the law permits no recover under the allegations pleaded. City of Philadelphia v. Buck, 587 A.2d 875, 877 (Pa. Cmwlth. 1991).

The University is correct that the specification of charges does not contain allegations that, even if deemed true, were sufficient to sustain a cause of action or permit recovery under Section 1201(a)(3). The Union does not allege in its specification of charges that the University took any adverse employment action against Mr. Chansky and Ms. Glickman in their capacity as Teaching Assistants. Accordingly, demurrer is granted with respect to the 1201(a)(3) claims. Also, the record in this case shows that the University did not take any adverse employment action against either Mr. Chansky or Ms. Glickman in their employment capacity as Teaching Assistants, as required by the Act and the caselaw, under Section 1201(a)(3). Therefore, the University also did not violate Section 1201(a)(3) on the merits, and this cause of action must be dismissed as a matter of law.¹

¹ The Teaching Assistants' employment status is contingent upon maintaining full-time academic status in good standing. (EXs-1&4). Thus, if the

However, the Union properly pleaded and preserved an independent violation of Section 1201(a)(1). This Section does not require that an employer take adverse employment action against an employee. Rather, this Section prohibits an employer, their agents, or their representatives from "(1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of [the] [A]ct." The Board has held that an independent violation of Section 1201(a)(1) occurs: "where in light of the totality of the circumstances, the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001); Northwest Area Educ. Ass'n v. Northwest Area Sch. Dist., 38 PPER 147 (Final Order, 2007). The complainant does not have the burden to show improper motive or that any employees have in fact been coerced. Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order, 2004). However, an employer does not independently violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. Ringgold Education Association v. Ringgold School District, 26 PPER 25155 (Final Order, 1995).

In its brief, the Union cites to Grand Sierra Resort & Casino, 365 NLRB 751 (2017), which held that Section 8(a)(1) of the National Labor Relations Act, which is the same as Section 1201(a)(1) of PERA, prohibits an employer from taking action against a former employee for protected activities that the individual engaged in stemming from her employment with the Resort and Casino. (Union Brief at 13-14). In Grand Sierra, a former employee of the Resort and Casino frequented one of the Resort's night clubs, which the Resort permitted former employees to do. Sometime after the employee concluded her employment, she became the lead plaintiff in a class action lawsuit against the Resort for unpaid wages in violation of the Fair Labor Standards Act (FLSA) and Nevada Law. After she filed the lawsuit, the Resort prohibited her from going to the Resort's nightclub. The National Board affirmed the ALJ's determination and opined as follows:

We find that the Respondent violated Section 8(a)(1) of the Act by denying [Ms.] Sargent access to its facility, contrary to its longstanding past practice of granting access to former employees as it would to any other member of the public. In so finding, we agree with the judge that the Respondent expressly retaliated against [Ms.] Sargent for engaging in the protected concerted activity of filing a class and collective action against the Respondent on matters concerning the workplace. The Respondent's exclusion of [Ms.] Sargent, in response to her participation in protected concerted activity, would reasonably tend to chill employees from exercising their Section 7 rights. Upon observing or learning of this targeted action against the lead plaintiff in the FLSA lawsuit, the Respondent's employees reasonably would conclude they, too, might be subject to reprisals and reasonably would be deterred from participating in a work-related lawsuit or other protected concerted activity.

University were to take adverse academic action against a student that affects his/her terms and conditions of employment or his/her employment status for engaging in protected activity as an employee, such student action could violate Section 1201(a)(3).

Grand Sierra, 365 NLRB at 751 (Citations omitted) (emphasis added).

The dissenting opinion posited that excluding the former employee from her former place of employment did not violate Section 8(a)(1) because it did not affect her wages, hours, or other terms and conditions of employment. This is the same argument made by the University in this case. In responding to the dissenting opinion and rejecting this position, the Grand Sierra majority stated as follows:

[T]he relevant question under Section 8(a)(1) is not whether the Respondent affected [Ms.] Sargent's wages, hours, or terms and conditions of employment, but whether (in the words of the Act) the Respondent has "interfere[d] with, restrain[ed], or coerce[d] employees in the exercise of the rights guaranteed in section 7." As explained, the Respondent's actions, taken in response to [Ms.] Sargent's protected lawsuit, would have reasonably tended to interfere with employees' exercise of their statutory rights.

Id. at 752.

The University argues that Grand Sierra is not binding on this Board and that the circumstances in this case are "starkly" different from Grand Sierra (Temple Brief at 18-19). Temple argues that the National Board found that there was evidence of retaliation because the resort treated the complainant differently than other off-duty and former employees who did not participate in the lawsuit. Temple contends that, in contrast to Grand Sierra, other Teaching Assistants in the same cohort who went on strike suffered no adverse consequences, including student director Harlow, and therefore the Union cannot show that the decision to not fully produce Mr. Chansky's and Ms. Glickman's plays was tied to their protected activity. (Temple Brief at 19).

However, I find that the application of Grand Sierra to this case is appropriate. The factual distinction made by Temple does not address the unique position of the student playwrights in that they were promised a benefit that was not required by their program whereas the student directors, and perhaps other students in the cohort, had program requirements to fulfill that the University could not change. The program requirements for student directors makes their situation not comparable to student playwrights. Also, of the 6 student playwrights, only Ms. Glickman and Mr. Chansky engaged in the strike and suffered adverse consequences, making the facts very similar to Grand Sierra, when comparing striking playwrights to non-striking playwrights. The question under Section 1201(a)(1) does not necessarily turn on whether the University retaliated against Ms. Glickman and Mr. Chansky, but whether denying them the promised educational benefit of a full production after the strike interfered with, restrained, or coerced them and other Teaching Assistants in the exercise of their Article IV rights as employees. Indeed, the application of Section 1201(a)(1) is more compelling here than the application of Section 8(a)(1) of the National Act in Grand Sierra because Ms. Glickman and Mr. Chansky are still employees.

Accordingly, Section 1201(a)(1) applies to employer conduct towards non-employees for protected activities engaged in as employees or stemming from their current or former employment with the employer, where that conduct reasonably coerces current employees, after considering the employer's offsetting reasons. Although unnecessary, retaliatory motive will also

establish a tendency to coerce employees under the totality of the circumstances and an independent 1201(a)(1) claim, as demonstrated in Grand Sierra. Furthermore, to permit the University to allegedly retaliate against or coerce students, who engaged in a lawful strike as employees, by not applying Section 1201(a)(1), would undermine the policies of the Act and the protections of Article IV. Such action could expose the students, who engaged in protected activities as employees, to a range of retaliatory or coercive action regarding their academic life, contrary to the Act. For example, the University could deny those students registration for courses necessary for graduation or access to facilities accessible to other students and employees, as in Grand Sierra.

A full production of a playwright's thesis play is not required for graduation from Temple's MFA program, but directing a full production is required of the student directors in the MFA program. A full production is also not a condition of employment for the playwrights as Teaching Assistants. Thus, as a general matter, the University's decision to provide a full production to a student thesis play, or withhold a full production, would normally be its prerogative. However, a managerial representative of Temple may not use a prerogative in a coercive or retaliatory manner. Teamsters, Local No. 205 v. Brentwood Borough, 35 PPER 112 (Final Order, 2004); United Steel Workers of America, Local 8125 v. East Taylor Town ship, 24 PPER ¶ 24166 (Final Order, 1993). In this case, Temple the employer would not be permitted under the policies of the Act to use its academic arm to take away a promised academic benefit that would be in retaliation for employment related protected activities or that would have a coercive effect on employees.

At the time that Ms. Glickman and Mr. Chansky were considering which schools' MFA programs to attend, Professor Duer told both of them that their thesis plays would receive a full production if they were accepted into the program. They were both accepted into the program. Also, both of them chose the MFA program at Temple because Professor Duer promised them a full production of their thesis plays. Although he may have intended it at the time, Professor Duer did not expressly condition the fulfillment of this promise on the student directors' choosing their plays or otherwise being paired with the 2 playwrights. Ms. Glickman testified that she would not have attended Temple if she was not going to receive a full production of her thesis play, and Mr. Chansky testified that it was a big selling point for him. Mr. Chansky received acceptance offers from other schools that did not offer full productions, and the full-production offer from Temple was a "huge" reason why he chose Temple. Additionally, throughout their time matriculating in the Temple MFA program, the full production of their thesis plays was repeatedly and fully discussed during playwriting classes. Ms. Glickman repeatedly discussed with Professor Stafford and the technical students potential stage sets and props for her play. Mr. Chansky also repeatedly discussed the full production of his thesis play with Professor Stafford.

The full production of their thesis plays is significant to both students for several reasons. Playwrights write plays for the purpose of them being fully realized and shown on stage. Ms. Glickman has been spending her time in the program writing stage directions into her play that will have no meaning without seeing the performance under a full production. She wants to see actors move through the world that she created. A full production would allow Ms. Glickman to learn, as a student, how certain staging elements work and how the audience responds to them. For example, an actor slamming a real

door has a different effect on the audience than the actor going behind a curtain. A workshop production does not provide a full representation of the play. Without the necessary props, the workshop production deprives audience members of a chance to fully comprehend the play because they may not understand what the block props represent.

A full production is also important to the student playwrights because getting a play fully produced at a theater is difficult given the competitive nature of the playwriting business. To get a theater to fully produce a play at any stage of a playwright's career is rare. With this understanding, obtaining a full production while in graduate school was a big selling point for Mr. Chansky to accept Temple's offer of admission into the MFA program. Also, Mr. Chansky plans on working with Philadelphia theater companies after graduation. The full production of his thesis play is an opportunity to invite representatives from area theater to showcase his work. The workshop production of his play (i.e., *Earth Logic*), without astronaut suits and a spaceship, would be confusing and unclear. Seeing his play fully realized is important to the story of his thesis play, which would be better served with a full production.

For approximately 6 weeks between the end of January 2023 and the beginning of March 2023, the TUGSA Teaching Assistants went on strike. Ms. Glickman, Mr. Chansky, and Mr. Harlow participated in the strike, but student director Ontarioa Wilson did not. Ms. Glickman prepared a letter for non-striking Teaching Assistants in the cohort, which she gave to Ms. Wilson, and which indicated that non-strikers were standing against consequential theater. Ms. Wilson was offended by the letter and the interaction did not go well.

Professor Duer and Professor Stafford are both employer supervisors of the playwrighting Teaching Assistants and Department heads making decisions about students in the cohort. As employer representatives, Professors Duer and Stafford were prohibited from interfering with or coercing the Teaching Assistants in the exercise of protected rights after engaging in a strike in a manner that affected their educational opportunities under Section 1201(a)(1) of the Act. The question becomes whether taking away the full production of the student playwrights' plays had a tendency to coerce reasonable employees (i.e., Teaching Assistants) at Temple, and whether the Department's reasons legitimately outweigh the coercive effect on exercising protected rights.

On October 24, 2023, Mr. Chansky met with Department Chair Duer who reaffirmed that both student playwrights would receive full productions of their thesis plays directed by a faculty member, instead of student directors. Sometime later in November 2023, Professor Duer notified Ms. Glickman that her thesis play would receive a workshop production with representational boxes and costumes instead of a full production with real props. Also, in the fall of 2023, Professor Stafford told Ms. Glickman that Ms. Wilson would not work with her. Professor Stafford further mentioned that neither playwright can work with Ms. Wilson.

On January 24, 2024, both Ms. Glickman and Mr. Chansky met with Professor Stafford who informed them that they could not work with the student directors because of everything that happened with the strike and that the Department decided that the 2 student directors would direct full productions and 2 faculty directors would direct workshop productions of Ms. Glickman's and Mr. Chansky's plays, thereby increasing the productions from 2

to 4, and that the Department did not have the money for 4 full productions. During a February 6, 2024 meeting, Professor Duer told Mr. Chansky that because of the higher salaries that the Teaching Assistants obtained as a result of the strike, there was no longer enough money for the full production of their thesis plays.

At the hearing, Department Chair Duer testified that, after receiving complaints about tensions between students in the cohort over participation in the strike, he decided that, although he could have, he would not force students in the cohort to work together because such collaboration would not be conducive for artistic productions. He testified that he did not believe that he could have the student directors in the cohort direct Ms. Glickman's and Mr. Chansky's plays because of the fracture in the cohort. With that decision, 2 student productions became 4 and the 2 extra productions could not be planned, designed, rehearsed, and coordinated for full productions. He decided on workshop productions for Ms. Glickman's and Mr. Chansky's thesis plays. During this testimony, Professor Duer did not mention any budget shortfall that required the elimination of the full production for Ms. Glickman's and Mr. Chansky's thesis plays.

The Temple Bulletin provides that the culminating event for the MFA in Directing is: "One fully supported thesis project [that] is produced in the main season during the third year." (UX-2) (emphasis added). In this regard, the student directors must direct full productions in their third and last year of the program. Significantly, Mr. Harlow and Ms. Wilson did not testify at the hearing and there is no testimony from them that they both refused to work with Ms. Glickman and Mr. Chansky, as related by Professor Stafford. There is no testimony from Mr. Harlow or Ms. Wilson concerning the nature and extent of the alleged tension. There is no evidence indicating whether any of the Department heads approached the student directors to see if they would direct full productions of Mr. Chansky's and Ms. Glickman's plays. Mr. Harlow had no issues with either Mr. Chansky or Ms. Glickman. Seemingly, Ms. Wilson may have been willing to work with Mr. Chansky on his play because there is no evidence that she had any issues with Mr. Chansky. In this way, even if the Department had planned to have the student directors direct Mr. Chansky's and Ms. Glickman's plays, the University did not explain why Ms. Wilson could not, or would not, have directed Mr. Chansky's play while Mr. Harlow directed Ms. Glickman's play, without the alleged negative effect on artistic collaboration. Accordingly, the University's premise for withdrawing the full production of Mr. Chansky's and Ms. Glickman's plays, that both student directors could not work with both student playwrights, and which resulted in an allegedly unanticipated 2 additional productions, is unsubstantiated on this record.

Also, although Department Chair Duer testified that he "envisioned" that the 2 student directors would direct the 2 student playwrights' plays, the record also provides that the student directors were able to choose the plays they directed in both their second and third years. Since the record is not clear whether Ms. Wilson refused to work with Mr. Chansky and whether Mr. Harlow refused to work with both playwrights, the inference drawn from the record is that there was always the possibility that the directors could choose other plays and that there would be 4 full productions.

Moreover, in the fall of 2023, Professor Duer was still offering full productions for Ms. Glickman's and Mr. Chansky's plays with faculty directors demonstrating that faculty direction for full productions was a viable and affordable option, when there was plenty of time left to prepare for a full

production of both plays. Consequently, the cost of 4 full productions was not a concern for Professor Duer in the fall of 2023. Then, in January 2024, Professor Stafford told Ms. Glickman and Mr. Chansky that they would not have a full production because they could not work with the student directors as a result of everything that happened with the strike. The sweeping nature of this statement was factually inaccurate because Mr. Harlow had no problem with Ms. Glickman or Mr. Chansky, and Ms. Wilson only had an alleged issue with Ms. Glickman.

Then, on February 6, 2024, Professor Duer gave a different reason and told Mr. Chansky that the Department did not have the money for the full production of his and Ms. Glickman's plays because of the higher salaries that Teaching Assistants won as a result of the strike. Later at the hearing, Professor Duer provided yet a different reason which was that there was not enough time to schedule full productions for Ms. Glickman's and Mr. Chansky's thesis plays, with the schedule of other stage performances, because it takes 14 months to prepare a full stage production. But in the fall of 2023, when Professor Duer decided that full productions would be done with faculty directors, there were more than 14 months available to plan for the full productions. The shifting unsubstantiated justifications, from inaccurately representing that both student directors would not work with both Mr. Chansky and Ms. Glickman, to representing that faculty directors could fully direct and produce the plays (resulting in 2 additional full productions), to representing that the Department lacked the money to fully produce 4 plays as a result of salary increases obtained from the strike, to representing that there was not enough time left for the full productions, when there was time, cumulatively support an inference of unlawful motive, and they are not legitimate business reasons.

After having promised Mr. Chansky and Ms. Glickman the educational benefit and experience of full productions, the Department denied them those full productions after the strike, using Ms. Wilson and Mr. Harlow, cost, budget, and a supposed lack of production time as shifting pretextual reasons. Significantly, Professor Duer's statement, that the playwrights could not receive a full production because of the increased salaries obtained by Teaching Assistants as a result of the strike, is by itself coercive. Also, the statement demonstrates Department Chair Duer's state of mind to punish the only 2 playwrights that went on strike for the increased salaries, where no adverse consequences were taken against the non-striking student playwrights and where the Department had the money for many other productions.

This record supports the inference that the Department retaliated against Mr. Chansky and Ms. Glickman for engaging in a lawful strike by revoking a promised full production of their thesis plays, which reasonably coerced bargaining unit employees in violation of Section 1201(a)(1). Even if the record did not support the inference of the retaliatory intent of the University's actions in this case, under the totality of the circumstances, a reasonable employee would be coerced in the exercise of protected rights after learning that their student environment, training, achievements, success, or performance could be jeopardized by exercising those protected rights as employees or stemming from their employment as Teaching Assistants. Moreover, Temple has not established with substantial, credible evidence sufficient, legitimate, non-pretextual reasons for refusing to provide the promised full productions for Ms. Glickman's and Mr. Chansky's thesis plays that could outweigh the coercive effect that this action had on protected rights of bargaining unit employees.

The University also argues that the Board lacks jurisdiction to grant full productions for Mr. Chansky and Ms. Glickman. In support of this argument, Temple posits that there is no statutory violation and there is no precedent for granting that type of remedy where the claimed unfair practice is against an individual in a non-employee capacity and where both complainants will no longer be students. However, a case of first impression under Section 1201(a)(1) of the Act does not deprive the Board of jurisdiction. Also, the Union did establish a statutory violation under Section 1201(a)(1) of the Act, which authorizes the Board to remedy and reverse the very act for which the violation was found. The fact that Mr. Chansky and Ms. Glickman will no longer be students in the Theater Program does not affect the University's ability to give them full productions. Indeed, the University consistently and frequently fully produces plays written by non-student playwrights. Accordingly, the University violated Section 1201(a)(1) of the Act, and the appropriate remedy is to require the University to fully produce Mr. Chansky's and Ms. Glickman's plays.

CONCLUSIONS

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

1. The University is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employee organization within the meaning of Section 301(3) of PERA.
3. Mr. Chansky, Ms. Glickman, and the Teaching Assistants are public employees within the meaning of Section 301(2) of PERA.
4. The Board has jurisdiction over the parties hereto.
5. The University has not committed unfair practices in violation of Section 1201(a)(3) of the Act.
6. The University has independently committed unfair practices in violation of Section 1201(a)(1) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the University shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act and in violation of Section 1201(a)(1) of the Act.

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

(a) Immediately make Jolie Glickman and Peter Chansky whole for refusing to provide the promised full production of their thesis plays by immediately starting the full production of their thesis plays, culminating in a full performance within 14 months, without regard to graduation or student status, including but not limited to full set, lighting, costume, and realistic prop designs and construction, with either a faculty or a third-year student director;

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

(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.

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 and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of February, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE UNIVERSITY GRADUATE STUDENTS :
ASSOCIATION AFT LOCAL 6290 :
v. : CASE NO. PERA-C-24-119-E
TEMPLE UNIVERSITY :

AFFIDAVIT OF COMPLIANCE

The University hereby certifies that it has ceased and desisted from its independent violation of Section 1201(a)(1) of PERA; that it has ceased interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act; that it has begun the full production of the thesis play of Ms. Glickman to be completed within 14 months; that it has begun the full production of the thesis play of Mr. Chansky to be completed within 14 months; that it has posted a copy of the decision and order in the manner directed 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