COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEMPLE ASSOCIATION OF UNIVERSITY  
PROFESSIONALS LOCAL 4531 AFT

v.  
Case No. FERA-C-05-506-E

TEMPLE UNIVERSITY

PROPOSED DECISION AND ORDER

On October 31, 2005, the Temple Association of University Professionals Local 4531 AFT (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Temple University (University) violated Section 1201(e)(1) and (2) of the Public Employe Relations Act (Act). On December 21, 2005, the Secretary of the Board issued a complaint and notice of hearing directing a hearing on March 17, 2006. On that date all parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. In lieu of presenting viva voce testimony the parties submitted a series of factual stipulations and joint exhibits. Both parties filed post-hearing briefs.

The examiner, on the basis of the factual stipulations and exhibits presented and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The University is a public employer. (Joint Stipulations 2)1

2. The Union is an employe organization. (J.S. 1)

3. TAUP is the certified bargaining agent for a unit of certain faculty and academic professionals employed by Temple. (J.S. 3)

4. Since 1973, TAUP and Temple have been parties to successive collective bargaining agreements, each of which has contained a dues deduction provision, pursuant to which TAUP members may authorize Temple to deduct their membership dues from their paychecks, and remit those dues to TAUP. (J.S. 4)

5. The current collective bargaining agreement, effective from October 15, 2004, through October 15, 2008, was ratified in early March, 2005. (J.S. 5)

6. During the negotiations for the current collective bargaining agreement, one of TAUP's bargaining demands was the inclusion of a provision in the contract stating that "Nonmembers will be charged a

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1 Hereinafter referred to as J.S.
fair share fee that is equal to the pro-rata share of expenses for activities or undertakings that are reasonably employed to implement or effectuate the duties of the TAUP as the exclusive bargaining agent." TAUP had proposed the addition of similar language during every round of contract negotiations since the passage of Act 84 of 1988, 71 P.S. § 575 ("Act 84"). (J.S. 6, 7)

7. Temple opposed the Union’s fair share fee proposal. (J.S. 8)

8. The Union’s fair share fee demand was the last issue to be resolved during the negotiations. The parties ultimately agreed to a new contract provision which states as follows:

TAUP shall be authorized to collect a fair share fee from all members of the bargaining unit, calculated in accordance with applicable law, if it obtains and maintains seventy percent (70%) of the bargaining unit as dues-paying members of TAUP as measured on November 1 of each calendar year. If TAUP fails to maintain seventy percent (70%) of the bargaining unit as dues-paying members of TAUP as measured on November 1 of each calendar year, its authorization to collect a fair share fee shall cease.

(J.S. 11)

9. Following ratification of the current collective bargaining agreement, TAUP sought to recruit new dues paying members from within the bargaining unit. (J.S. 13)

10. Bargaining unit members who join and become members of TAUP are obligated to pay dues to TAUP, and payment of dues is the only obligation of membership. The TAUP membership application authorizes payment of TAUP dues through payroll deduction. TAUP members may also remit their dues payments to TAUP directly. (J.S. 14)

11. In response to TAUP’s request, Temple began in August, 2005, to provide TAUP with a list of newly hired bargaining unit members in advance of the periodic employee orientation meetings. (J.S. 15)

12. Every month, Temple provides TAUP with a list of employees for whom dues have been deducted. TAUP reviews Temple’s lists for accuracy and has the opportunity to provide Temple’s Office of Human Resources with a list of corrections, which would include the addition of any new members who have signed the membership application/dues deduction authorization. (J.S. 16)

13. At the same time, TAUP provides the original membership application/dues deduction authorization forms signed by such employees to the Office of Human Resources. (J.S. 17)


15. On or about September 23, 2005, TAUP turned in to Temple’s Office of Human Resources a chart listing 56 new TAUP members who had authorized dues deductions, along with their membership applications. In September, 2004, TAUP had provided the Office of Human Resources with one new member application. In September, 2003, the Union turned
in 13 new membership applications to the Office of Human Resources.
(J.S. 20)

16. On or about September 26, 2005 the University mailed to Union
members who had authorized the University to withhold Union dues from
their paychecks the following correspondence:

Dear TAUP Bargaining Unit Member:

The recently negotiated collective bargaining agreement
between the Temple Association of University Professionals,
American Federation of Teachers, AFL-CIO Local 4531 (TAUP)
and Temple University, effective March 4, 2005, changed the
rights of bargaining unit members to revoke their
authorization to deduct TAUP dues payments from their
salary. Article 7.8 of the agreement now provides that during
the period from October 1 to October 15 of each calendar
year, any TAUP bargaining unit employee may revoke his or her
dues deduction authorization by sending notice to the
University and TAUP.

The decision is each individual's to make. The
University simply wants to be sure that you are aware of, and
understand, your rights and privileges under the new
agreement. Whether you revoke your TAUP dues authorization,
or whether you choose to continue the authorization, will not
make any difference in your wages, benefits, position or
treatment by the University. As far as the University is
concerned, that is a matter for each individual to decide for
himself or herself without pressure from the University or
TAUP.

If you voluntarily choose to revoke your dues deduction
authorization, the agreement requires that you send written
notice of revocation between October 1 and October 15 to the
Department of Human Resources, Temple University, 408
University Services Building, 1601 North Broad Street,
Philadelphia, PA 19122, and also requires that you send a
copy to the TAUP office at Barton Hall, Room A231, 1900 North
13th Street, Philadelphia, PA 19122-6082. The written notice
of revocation should contain your full name, employee number,
school/college and department, and be signed and dated by
you. A sample is attached for your convenience.

If you have any questions regarding the above, please
feel free to contact Sharon Boyle, Director of Labor and
Employee Relations, at (215) 204-XXXX.

Sincerely,

Deborah Hartnett

(J.S. 21; joint Exhibit 8)

17. Attached to the above-recited letter was the following form:

To: Department of Human Resources
   Temple University
I, the undersigned, a member of the TAUP bargaining unit, hereby revoke my prior authorization to Temple to deduct all dues payments authorized by the TAUP Constitution and By-Laws from my salary.

Name: ___________________ Employee #: ___________________

School/College: _________ Department: ________________

Signature: _______________ Date: ________________

cc: TAUP Office

Hartman Hall, Room A231
1900 N. 13th Street
Philadelphia, PA 19122-6082

Neither Ms. Hartnett nor Sharon Boyle, who was referenced in the letter, spoke with any bargaining unit members about revoking their dues deduction authorization. (J.S. 21, 22; Joint Exhibit 8)

18. Temple informs TAUP bargaining unit employees of other deadlines for exercising their rights under the collective bargaining agreement and other employment-related deadlines. For example, on May 3, 2005, Temple President David Adamany sent an e-mail message to bargaining unit employees (via their Temple email addresses) informing them that the nomination period for merit awards would close on May 16, 2005. On June 7, 2005, Jennifer Speer of the Temple Human Resources Department sent a memorandum to eligible full-time TAUP non-tenure track faculty members, at their home addresses, informing them of their new rights under the collective bargaining agreement (i) to enroll in a defined contribution pension plan by completing an enclosed salary reduction agreement form by July 31, 2005 and (ii) to elect additional life insurance coverage by completing an enclosed enrollment form prior to July 31, 2005. On November 1, 2005, Ms. Speer sent a memorandum to employees, at their office addresses, informing them of the applicable enrollment windows for electing Medicare Part D Prescription Drug Coverage. On November 15, 2005, Heather Woods of the Temple Human Resources Department sent a memorandum to eligible employees, at their office addresses, informing them of the November 28, 2005 – December 28, 2005, window for enrolling in a flexible spending account. On March 9, 2006, Ms. Wood mailed a letter, along with an Enrollment/change/Waiver Form to the homes of eligible employees informing them of their right, and applicable deadlines, to participate in the Retiree Health Benefits Pre-Funding Plan. These were sent to those employees to whom the communication was relevant, as opposed to all employees in the bargaining unit. (J.S. 24, 25)
18. Temple has not previously sent letters to TAUP members advising them of their right to revoke their dues deductions authorization. (J.S. 26)

19. TAUP regularly solicits bargaining unit members to become dues paying members of TAUP. Pursuant to the collective bargaining Agreement, Temple allows TAUP to use its facilities, bulletin boards and mail boxes in connection with these solicitations. Temple has not previously sent any letter to bargaining unit employees who are not members of TAUP regarding their right to become union members and/or to authorize dues deduction. (J.S. 27)

20. Eleven (11) TAUP members revoked their dues deduction authorizations, thereby resigning their membership in TAUP, during the October 1 through 15, 2005, revocation period. (J.S. 28)

21. Several of the eleven (11) who revoked their dues deduction authorizations during the contractual window period turned their revocations in to Temple’s Human Resources office, but did not provide copies to TAUP themselves. Sharon Boyle, Temple’s Director of Labor and Employee Relations, forwarded copies of the revocations to TAUP. (J.S. 30)

DISCUSSION

The Union complains that the University violated Section 1202(a)(1) and (2) of the Act when it sent a letter exclusively to dues paying Union members advising them how and when to withdraw authorization for dues deductions. The University included, for “convenience”, a printed form Union members could use to accomplish this task, and listed both addresses where Union members needed to send the withdrawal for it to be effective. Recipients of the letter were told, if they had any questions, “please feel free to contact Sharon Boyle, [the University’s] Director of Labor and Employee Relations....” The University defends its actions by citing federal authority, which at first blush, seems to be persuasive. Yet a close examination of the differences between those cited cases and this case leads to the conclusion that those federal cases simply are not applicable. The University violated Section 1201(a)(1) and (2) of the Act by sending this letter.

The Union calls attention to County of York, 10 PPER § 10157 (Nisi Decision and Order, 1979), a case in which the Board opined that an employer which assists employees in withdrawing their union membership commits an unfair practice under Section 1201(a)(1) and (2) of the Act. In County of York, the employer was approached by employees who intended to withdraw from the union. The employer volunteered to have some withdrawal letters typed on its stationary for those employees. The employer also covered the cost of postage to send those withdrawals to the union. The Board found those actions violated Section 1201(a)(1) and (2) of the Act. There are both similarities and differences between this case and that one. The University provided some assistance by providing a convenient, preprinted form that enabled Union members to do little more than sign their names to effectuate the
dues authorization withdrawal. The employees here did not seek out assistance from the University; rather the University took the impetus in contacting Union members. While the employer in County of York provided more direct assistance to union members than has the University, the University’s actions are still violative of the Act.

In Brownsville Area School District, 14 PPER ¶ 14153 (Proposed Decision and Order, 1983) the employer was found to have violated Section 1201(a)(1) when, out of concern that allowing an employee, Ms. Walker, to personally circulate a decertification petition in the high school might cause a confrontation, the principal walked the petition around the building himself. As he did so he informed each prospective signer “Would you like to sign a petition that Ms. Walker is presenting to decertify the union?” Id. at 403. Albeit, a revocation of dues deduction form is not a decertification petition. Nevertheless, the employer’s implied imprimatur was present in that case, and is also present in this case as well.

The University argues that the letter, as sent, does not constitute an unfair practice under federal precedent and recites that the Board has, in the past, seen fit to follow National Labor Relations Board (NLRB) precedent when the policies of the National Labor Relations Act (NLRA) and the Public Employees Relations Act (PERA) coincide. Commonwealth v. FLRB, 826 A.2d 332 (Pa. 2003). The University then cites, Perkins Machine Company v. International Union of Electrical Radio & Machine Workers, 141 NLRB 697 (1963), a case with facts strikingly similar to this one.

In Perkins, the NLRB found no violation of the NLRA where the parties’ agreement provided for an annual, fifteen-day dues deduction revocation period and the employer wrote a letter virtually identical to the one sent in this case. The NLRB found the letter free from “threat of reprisal or promise of benefit” and ruled that it only contained “a clear statement of Respondent’s [employer’s] neutral position.” The NLRB therefore concluded there was no violation of the NLRA by that employer. 141 NLRB at 700. The University’s brief then goes on to reference other NLRB cases that follow the Perkins rationale.

Included in those other cases is Ace Hardware Corporation, 271 NLRB 1174, 117 LRRA 1096 (1984). In Ace Hardware, the employer’s manager stated, in response to an employee’s question about withdrawal from the union, that if they would come to him or other members of management he could assist them in getting out and would help them in any way possible. The manager held up a check-off authorization card and stated that while management hadn’t approached any employees about canceling their dues deductions, if employees wanted to go their supervisor or to him, he would see what he could do. The Administrative Law Judge (ALJ) found a violation of Section 8(a)(1) of the NLRA under those facts. The NLRB reversed citing Perkins, supra. Given the Board’s

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2 The University refers to the form as a "sample notice", but it stretches the imagination to think that Union members would not simply sign and return the form provided. (Joint Exhibit 8)

3 Section 8(a)(1) of the NLRA is substantially similar to Section 1201(a)(1) of the Act.
decision in County of York, supra, and the hearing examiner's decision in Brownsville Area School District, supra, Board policy is more in line with the ALJ's opinion in Ace Hardware than with the NLRB's final decision. Moreover, there is an additional wrinkle in the facts of this case that differentiate it from the federal precedent cited by the University.

In this case more is at stake than the mere loss of an individual employee's dues. The Union may only collect fair share fees from non-member bargaining unit employees if it keeps a minimum seventy-percent membership rate in effect. If the University is successful in keeping or reducing Union membership below seventy-percent, the University could lighten the Union's coffers by almost thirty-percent. The parties here have a mixed history of multi-year contracts in which there is an annual dues withdrawal period, and multi-year contracts in which there is but one dues withdrawal period. Tellingly, in prior multi-year contracts where there was only one fifteen-day window period for Union withdrawal the University did not send Union members a letter reminding them of their withdrawal rights. Were the University so concerned that employees realize they could rescind dues authorizations, would it not be logical to send this letter previously, when employees had but one fifteen-day period in a multi-year contract to do so? Yet, regardless of whether there was one, or there were three revocation periods per contract, the University never before sent a letter like the one in question. Only when a third of the Union's income was at stake did the University become so concerned about Union members understanding their ability to withdraw dues deduction authorizations.

The parties' stipulations recite a litany of prior occasions when the University has sent letters reminding bargaining unit members of upcoming contractually mandated deadlines. And the University attempts to characterize the letter in question as just another of those reminders. All those reminders, however, spoke to employee benefits. Those reminders, therefore, involved only the relationship between the University and its employees, as opposed to the letter in question, which involved the relationship between Union members and the Union.

Looking past the University's legal rhetoric, the record reveals that the University sent a solicitation only to dues paying Union members, singularly emphasizing when and how they could rescind their dues authorizations, and included a preprinted form which required a minimum of effort to accomplish that end. Despite identical situations

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4 Those reminder letters covered such topics as, nomination periods for merit awards; enrollment periods for defined contribution plans, election periods for additional life insurance purchase, Medicare drug election coverage windows, and deadlines for both flexible spending account creation and the retiree health pre-funding plan. (Joint Stipulations, No. 24)

5 The record also indicates that "several" of the Union members who withdrew their dues deduction authorizations using the University's "sample form" sent the form only to the University. That is not surprising since at the top of the page the form shows but one addressee, the University, while the Union's address appears as a "CC"
in Whitemont, the University only sent this letter when it might have the effect of materially reducing the Union's income. Such an attempt to influence the Union's ability to raise funds violates Section 1201(a)(1) and (2) of the Act. See generally, Chester County Deputy Sheriffs Association v. Chester County, 28 EPER 1 28045 (Final Order, 1997) (a public employer violates Section 1201(a)(1) of the Act when it seeks to control the union's purse strings).

CONCLUSIONS

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

1. The University is a public employer within the meaning of Section 301(1) of the Act.

2. The Union is an employee organization within the meaning of Section 301(3) of the Act.

3. The Board has jurisdiction over the parties hereto.

4. The University has committed unfair practices in violation of 1201(a)(1) and (2) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the 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.

2. Cease and desist from interfering with the administration of the employee organization within the meaning of Section 1201(a)(2) of the Act.

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

[a] Post a copy of this decision and order within five (5) days from the 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

[b] Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

toward the foot of the page, and the University provided only one form.
(Joint Stipulations No. 30; Joint Exhibit 8)
IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this
nineteenth day of June, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY MURIZE, Hearing Examiner
Temple University (Temple) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 10, 2006, challenging a Proposed Decision and Order (PDO) issued on June 19, 2006. In the PDO, the hearing examiner concluded that Temple had violated Section 1201(a)(1) and (2) of the Public Employe Relations Act (PERA) by sending a letter to dues paying members of the Temple Association of University Professionals, Local 4531, AFT (TAUP) advising those employees on procedures for resigning from TAUP membership and withdrawing their authorizations for dues deductions, including a printed form which TAUP members could use to accomplish the resignation and revocation. On July 31, 2006, TAUP filed its response to Temple’s exceptions and a brief in support.

The facts as found by the hearing examiner are set forth at length in the PDO, but for the purpose of these exceptions are summarized briefly as follows. TAUP is the certified bargaining representative for a unit of Temple’s faculty and academic professionals. In the most recent negotiations for a collective bargaining agreement, TAUP attempted to negotiate a “fair share” agreement in which non-members of TAUP would be charged a fee equal to the pro-rate share of expenses for activities reasonably employed by TAUP to effectuate TAUP’s duty as the exclusive bargaining representative. TAUP and Temple ultimately agreed upon a fair share provision that provided that a fair share fee would be implemented in the event that TAUP obtained and maintained seventy (70) percent of the bargaining unit as dues paying members of TAUP as measured on November 1 of each calendar year. The collective bargaining agreement was ratified in early March of 2005 and TAUP subsequently sought to recruit new dues paying members from within the bargaining unit. On or about September 23, 2005, TAUP submitted to Temple’s Office of Human Resources a chart listing fifty-six (56) new TAUP members who had authorized dues deductions along with those employees’ membership applications. This number exceeded the number of membership applications and dues authorizations that TAUP had submitted in previous Septembers. On or about September 27, 2005, Temple mailed a letter (September 26th letter) to TAUP members who had authorized Temple to withhold dues from their paychecks informing those employees of their right under the recently negotiated collective bargaining agreement to revoke their dues authorizations during the period of October 1st to October 15th of each calendar year and also giving employees specific directions, including
the addresses to which the revocations were required to be mailed. The letter also contained a form on which the employees could merely provide their name, employee number, the date and other identifying information, execute the form and send it to the given addresses. The letter also directed the employees who had any questions to contact Sharon Boyle, Temple’s Director of Labor and Employe Relations. The letter made clear that the decision to revoke dues authorizations was the individual employee’s and that Temple wanted to be sure that the employees were aware of and understood their rights under the collective bargaining agreement. The letter further stated that whether the employee revoked his or her dues authorization or not, it would not make any difference in that employee’s wages, benefits, position or treatment by Temple. During the October 1st through October 15th period immediately following Temple’s letter, eleven TAUP members revoked their dues deduction authorizations and resigned their membership in TAUP. Several of the eleven who revoked their dues deductions authorizations during this period failed to provide copies to TAUP. Temple’s Director of Labor and Employe Relations forwarded copies of the revocations to TAUP.

In its exceptions, Temple contends that the hearing examiner erred in 1) concluding that Temple’s September 26th letter was intended to interfere with TAUP’s finances; 2) concluding that the September 26 letter constituted an unlawful attempt to influence the TAUP’s abilities to raise funds in violation of Section 1201 (d)(1) and (2) of PERA; 3) concluding that there is a meaningful difference between Board and National Labor Relations Board (NLAB) policy regarding an employer’s right to inform employees in a non-coercive manner of their right to resign from union membership and revoke dues deductions; and 4) failing to make findings of fact regarding Temple’s previously-stated opposition to fair share fees as contrary to academic freedom and freedom of association as communicated to the employees; TAUP’s failure to remind employees of their right to withdraw during the October 1st to October 15th period; that an employee who used Temple’s pre-printed form to resign and revoke subsequently renewed his TAUP membership; the net increase in the number of employees who joined TAUP during various periods of time; and that Temple made no effort to follow up on the September 26th letter.

Temple contends that the hearing examiner erred in his discussion wherein the hearing examiner states that the September 26th letter was an attempt by Temple to interfere with TAUP’s finances and to influence TAUP’s ability to raise funds. Temple contends that these assertions are mere speculation and are not supported by substantial evidence. The hearing examiner’s discussion of these matters addresses the intent or motivation of Temple in distributing the September 26th letter and Temple’s exceptions are an attempt by Temple to avoid a violation of PERA by arguing that the record fails to substantiate that Temple had an unlawful motive in distributing the September 26th letter. However, specific intent is not a necessary prerequisite to a conclusion that Temple interfered with the employees’ exercise of rights guaranteed by Article IV of PERA. PERA v. Montgomery County Community College, 15 PPER 1 15038 (Final Order, 1984), aff’d, 16 PPER 11356 (Court of Common Pleas of Montgomery County, 1985). Accordingly, even though an employer may not intend to coerce employees in the exercise of rights under PERA, the actions of the employer must be assessed to determine whether those actions may tend to coerce a reasonable employee in the
exercise of PERA rights, based upon the totality of the circumstances.
PLRB v. Woodland Hills School District, 13 PFER ¶ 13298 (Final Order,
1982); PLRB v. Brownsville Area School District, 14 PFER ¶ 14183
(Proposed Decision and Order, 1983); PLRB v. Commonwealth of
Pennsylvania (Department of Public Welfare, Eastern State School and
Hospital), 14 PFER ¶ 14153 (Proposed Decision and Order, 1983).
Therefore, Temple's objection to the hearing examiner's discussion
regarding its motivation in distributing the September 26th letter, even
if valid, does not change the result where it can be concluded that
Temple's action would tend to coerce or interfere with employee rights
given the totality of the circumstances.

Temple next argues that its actions in informing employees of
their right to resign their union membership does not amount to
unlawful interference in violation of PERA. The Board has long held
that an employer generally has a constitutionally protected right to
communicate with its employees in a non-coercive manner that does not
interfere with the exercise of rights granted in Article IV of PERA.
See City of Lancaster, 2 PFER 132 (Nisi Decision and Order, 1972); PLRB
v. Portage Area School District, 7 PFER 325 (Nisi Decision and Order,
1976); PLRB v. City of Philadelphia (Sheriff's Department), 14 PFER ¶
14118 (Proposed Decision and Order, 1983); Chester County Intermediate
Unit No. 24 Education Association, PSEA-NEA v. Chester County
Intermediate Unit No. 24, 35 PFER 110 (Final Order, 2004). Ordinary free
speech rights apply so long as such speech does not interfere with the
free exercise of employee rights without unlawful interference,
restraint or coercion in violation of Section 1201(a)(1) and (2) of
PERA. Thus, for example, the Board has held that an employer cannot
offer material assistance or support for one union in a contested
organizational campaign because to do so would interfere with the free
exercise of employee rights. South Park School District v. PLRB, 10
PFER ¶ 10762 (Order Directing Rerun Election, 1979). The Board has
further stated that allowing access to the employer's internal mail
system for one of two competing unions unlawfully interfered with the
free exercise of employee rights. Teamsters v. Central Bucks School
District, 33 PFER ¶ 33004 (Final Order, 2002). In each instance, the
employer transcended its free speech rights and offered material aid
and assistance to certain unions competing for employee support. While
the employer is free to express its views of union support or
opposition in a non-coercive atmosphere, it exceeds its statutory
authority when it takes action in a manner that interferes with the
free exercise of employee rights. Thus, when approached by employees
inquiring about their right to resign from the union, under the law,
the employer has the free speech right to respond to employees in a non-

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1 Article 4 provides as follows:

"It shall be lawful for public employees to organize, form, join or
assist in or engage in lawful concerted activities for the purposes of
collective bargaining or other mutual aid and protection or to bargain
collectively through representatives of their own free choice and such employees shall also have the right to
refrain from any or all such activities, except as may be required
pursuant to a maintenance of membership provision in a collective
bargaining agreement."

43 P.S. §1101.401
solicitous, non-coercive, neutral manner. By the same token, the
employer cannot lawfully transcend this right and solicit union
resignations and provide material aid and assistance to employees to
this end. Here the record shows that Temple initiated a solicitation
to employees to exercise their right to resign from the union and
provided a pre-printed form to assist employees to resign from the union
and revoke their dues authorization.

Temple did not restrict its actions to merely informing employees
in a non-coercive manner of their rights under the collective
bargaining agreement to resign from TAUP and revoke their dues
authorizations. Temple provided the employees with a pre-printed form
to resign from TAUP and revoke their dues authorization, forwarded
employee resignations to TAUP where the employees had failed to do so and
offered to further answer any questions, even though no employee had
posed any question regarding resignation and revocation.

We agree with the hearing examiner that the analysis of this case
must follow our decision in County of York, 10 PFER F 10157 (Nisi
Decision and Order, 1979), in which the Board found a violation where
the employer was approached by employees who wanted to withdraw from the
union and the employer prepared withdrawals by its personnel on
employer stationery and paid the postage to send the withdrawals to the
union. Temple's actions here are at least as objectionable as those
found unlawful in County of York. Temple crossed the line of
permissible free speech in materially assisting the employees in
resigning their membership and revoking their dues deductions by
sending an unsolicited letter to TAUP members that included a pre-
printed form for the employees to accomplish those tasks, soliciting and
offering to answer any further questions regarding the process and
thereafter correcting the employees effort to resign from TAUP by
mailing the resignations to TAUP where the employees had failed to do so
as was required by the collective bargaining agreement. Indeed the
provision of the pre-printed form and forwarding resignations to TAUP
where the employees had failed to do so is substantially similar to the
employer's typing the resignations for the employees and mailing them to
the union in County of York. We reaffirm our statement of policy in
County of York and affirm the decision of the hearing examiner.

Temple further argues that the hearing examiner erred in failing
to make various findings of fact including Temple's previously-stated
opposition to fair share fees as contrary to academic freedom and
freedom of association as communicated to the bargaining unit employees
during the TAUP negotiations, TAUP's allegedly limited communications
to bargaining unit employees regarding the right to revoke dues
authorizations during the annual October 1st to October 15th period, the
net increase in the number of employees who joined TAUP during various
periods of time and that Temple made no effort to follow up on the
September 25th letter. Generally, hearing examiner must set forth
those findings that are necessary to support the conclusion reached by
the hearing examiner and need not render all possible findings on all
276, 346 A.2d 556 (1975). A number of Temple's proffered findings of
fact go to Temple's alleged lack of intent to interfere with the
employees' exercise of rights under the Act. Because, as noted above,
unlawful intent is not a component of violations of Section 1201(a);1)
and (2) of PERA, Temple's communications to unit members regarding its
position on fair share fees during collective bargaining negotiations, Temple’s lack of any activity to follow up on the September 26th letter and TAUP’s alleged failure to adequately inform its members of their resignation rights under the new collective bargaining agreement would have no material effect on our examination of whether the circumstances surrounding the September 26th letter constitute a violation of those subsections of PERA. Further, the proffered findings regarding the net increase in the number of employees who joined TAUP during various periods of time, and that one employee who utilized the pre-printed form subsequently renewed his membership, go to the issue of whether Temple’s actions actually coerced any employees in the exercise of their rights under PERA. It is axiomatic that a violation of Section 1201(a)(1) of PERA can occur even where it is not shown that any individual employee was actually coerced, but that an examination of the totality of the circumstance must be performed to determine whether the employer’s action had a tendency to coerce employees. *Tri-Valley Education Association v. Tri-Valley School District*, 29 PPFR 1 23202 (Proposed Decision and Order, 1998). Accordingly, the proffered findings that run counter to a conclusion that Temple’s actions did in fact coerce specific employees does not change the determination that Temple violated PERA. Upon review of the record and Temple’s exceptions, the hearing examiner’s findings accurately reflect the factual underpinning necessary for the disposition of this case and Temple’s proffered findings of fact would not alter the conclusion that it had committed an unfair practice.

Temple separately argues that the hearing examiner erred by not adopting a decision of the NLRB in *Perkins Machine Company v. International Union of Electrical Radio and Machine Workers*, 141 NLRB 697 (1963). The Board has stated that it will consider the positions of other jurisdictions (e.g., NLRB, federal courts and other state jurisdictions) in resolving issues arising before the Board. In such circumstances, those decisions may be considered for their persuasive value but in no sense can it be claimed, as Temple does here, that the hearing examiner erred in “failing to follow directly applicable federal precedent”. (Brief at 0) It is simply not error for the Board to accept or reject as persuasive the authority of any other jurisdiction. Rather, it is for the Board to exercise its discretion to accept or reject proffered federal authority on any given area of law. *AFSCME v. PLRB*, 529 A.2d 1188 (Pa. Cmwlth., 1987). *Pennsylvania Emergency Management Agency v. PLRB*, 768 A.2d 1201 (Pa. Cmwlth., 2001). Indeed, the exception here, Temple, has previously sought to assign specific error for the Board’s failure to follow federal authority, an argument rejected by the Board and Commonwealth Court. *Temple v. PLRB*, 734 A.2d 448 (Pa. Cmwlth., 1999), petition for allowance of appeal denied, 561 Pa. 682, 749 A.2d 474 (1999). Here the Board has, as above noted, adopted its own law in the past 36 years since passage of PERA regarding employer material assistance to employees in sufficiently similar circumstances and resort to federal authority is unavailing.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Proposed Order and Decision of the hearing examiner.
ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board HEREBY ORDERS AND DIRECTS that the exceptions filed by Temple to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed and the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of November, 2006. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.