

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHAMBERSBURG AREA EDUCATION ASSOCIATION/PSEA/NEA :
 :
 v. : Case No. PERA-C-09-407-E
 :
 CHAMBERSBURG AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On October 8, 2009, the Chambersburg Area Education Association/ PSEA/NEA (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Chambersburg Area School District (District) violated sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by

"unilaterally remov[ing] bargaining unit work without bargaining when [it] made the decision to subcontract new positions for school counselor and social worker to Manito, Inc., an independent contractor, for the Hamilton Heights, Ben Chambers and Scotland elementary schools."

On October 29, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 25, 2010, if conciliation did not resolve the charge by then. On November 12, 2009, the District filed an answer and new matter averring that the charge should be dismissed for a multitude of reasons. On November 16, 2009, the hearing examiner, upon the request of both parties, continued the hearing. On March 11, 2010, the hearing examiner held the hearing and afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On April 16, 2010, the District filed a brief. On October 29, 2010, the Association filed a brief and proposed findings of fact and conclusions of law.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On April 8, 1971, the Board certified the Association as the exclusive representative of a bargaining unit comprised of "all professional employes [of the District] including all classroom teachers, guidance counselors and home and school visitors, librarians, nurses and dental hygienist and head of the nurse department; but excluding teaching principals in the elementary schools and the department heads and all other employes of the employer performing non-professional work and any other supervisors, first level supervisors and confidential employes as defined in the [PERA]." (Case No. PERA-R-826-C)

2. By the end of the 2008-2009 school year, the District employed elementary school counselors to provide counseling services to students at its Benjamin Chambers, Fayetteville and Hamilton Heights elementary schools. The District also employed a social worker to provide social services. (N.T. 18-20, 22-24, 27, 30, 38-39, 42, 51-52, 60; Association Exhibit 6, Respondent Exhibit 1)

3. At the beginning of the 2009-2010 school year, the District started using employes of a subcontractor (Manito, Inc.) to provide counseling and social services to students at its Benjamin Chambers, Fayetteville and Hamilton Heights elementary schools. (N.T. 11-15, 19-24, 26-30, 33-34, 44, 48-49, 63-64, 66-68; Association Exhibits 2, 4, 5 and 7)

DISCUSSION

The Association has charged that the District committed unfair practices under sections 1201(a)(1) and (5) of the PERA by

"unilaterally remov[ing] bargaining unit work without bargaining when [it] made the decision to subcontract new positions for school counselor and social worker to Manito, Inc., an independent contractor, for the Hamilton Heights, Ben Chambers and Scotland elementary schools."

An employer commits unfair practices under sections 1201(a)(1) and (5) if it unilaterally transfers to non-members of a bargaining unit work that members of the bargaining unit had been performing on an exclusive basis. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). Since unilateral action is a necessary element of a charge of this nature, no violation of sections 1201(a)(1) and (5) may be found if the charging party does not prove by substantial evidence that the employer acted unilaterally. City of Philadelphia, 23 PPER ¶ 23152 (Final Order 1992); Reynolds School District, 37 PPER 111 (Proposed Decision and Order 2006).

A close review of the record shows that at the beginning of the 2009-2010 school year the District started using employees of a subcontractor (Manito, Inc.) to provide counseling and social services for students at its Benjamin Chambers, Fayetteville and Hamilton Heights elementary schools (finding of fact 3). A close review of the record does not show, however, that the District acted unilaterally. Thus, even assuming without deciding that the District transferred bargaining unit work to non-members of the bargaining unit when it started using the Manito employees, there is no basis for finding the District in violation of sections 1201(a)(1) and (5).

In its brief, the Association argues at length that the Manito employees are performing bargaining unit work and that the various contentions raised by the District in defense of the charge are without merit. Notably, however, although the Association specifically alleged in its charge that the District's use of the Manito employees was unilateral, neither its brief nor its proposed findings of fact references any record evidence to that effect. In fact, the Association has not even proposed a finding that the District acted unilaterally. As noted above, unilateral action is a necessary element of a charge of this nature, so the lack of proof in that regard is fatal to the charge.

Given that the charge must be dismissed for lack of proof that the District acted unilaterally, the various contentions raised by the District in defense of the charge need not be addressed.

CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the PERA.
2. The Association is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The District has not committed unfair practices under sections 1201(a)(1) and (5) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this second day of November 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner