

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE COUNTY :
AND MUNICIPAL EMPLOYEES :
DISTRICT COUNCIL 87 :
:
v. : Case No. PERA-C-10-185-E :
:
COUNTY : LUZERNE

FINAL ORDER

Luzerne County (County) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 6, 2011, challenging a Proposed Decision and Order (PDO) issued on June 16, 2011. In the PDO, the Board's Hearing Examiner concluded that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by failing to bargain with the American Federation of State, County and Municipal Employees, District Council 87 (AFSCME) over the use of non-County employes to provide certain services that are overseen by the Luzerne/Schuylkill Workforce Investment Board (WIB). AFSCME timely filed an answer to the exceptions on July 21, 2011. Pursuant to an extension of time granted by the Secretary of the Board, AFSCME timely filed a brief in opposition to the exceptions on August 29, 2011. After a thorough review of the record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

11. The Pennsylvania Workforce Development Act, 24 P.S. § 6250.501(b) states:

Purpose. - The purpose of each local workforce investment board is to advise and assist the chief elected official in the county or counties served by the local workforce investment board by setting policy to promote effective workforce investment programs in a designated geographic area.

24 P.S. § 6250.501(b).

22. On November 18, 2009, representatives of the WIB met with Chairperson Petrilla and her counterpart from the Schuylkill County Board of Commissioners, informing them of the WIB's decision to seek competitive bids for all of the programs overseen by the WIB in Luzerne County. At that meeting, the Chairpersons agreed that the WIB should seek competitive bids for those programs. (N.T. 48-49, 178, Union Exhibit 1, Union Exhibit 6 ("Media Statement"; "Timeline and statement of facts" at 2)).

31. The Chief Elected Officials (CEOs) of the Luzerne/Schuylkill workforce investment area appoint the members of the WIB to staggered, fixed terms of no more than four years. The CEOs can only remove the members of the WIB for violating the conflict of interest code. (29 U.S.C. § 2832(c)(1)(B)(i)(I)-(II); 24 P.S. § 6250.502(b)(2); Joint Exhibit 2; Joint Exhibit 4; Union Exhibit 11).

32. On February 20, 2007, the WIB issued a request for proposals for Title I youth activities to be provided in Luzerne County. On April 1, 2007, the WIB entered into a contract with the County's Workforce Investment Development Agency (County WIDA), effective February 23, 2007 to June 30, 2010, for the County WIDA to provide Title I In-School and Out-of-School youth programs within the County. (N.T. 64-65, 83, 180-181, 187-188, County Exhibit 4).

33. The County WIDA submitted proposals in response to the WIB's March 8, 2010 requests for proposals, but was not chosen by the WIB to be the provider of Title I and EARN services in the County. (N.T. 179-180; Union Exhibit 7).

DISCUSSION

The facts of this case are summarized as follows. AFSCME is the exclusive bargaining representative for the residual bargaining unit of County employees. This bargaining unit includes, among others, approximately 39 employees who work in the County's Workforce Investment Development Agency (County WIDA). For many years, prior to June 30, 2010, the County WIDA employees exclusively provided certain state and federally-funded services in the County which were overseen by the WIB.

Pursuant to the federal Workforce Investment Act (WIA)¹ and its state counterpart, the Workforce Development Act (WDA)², the Commonwealth of Pennsylvania is divided into a number of geographic regions known as workforce investment areas. Section 6250.501(a)(1) of the WDA states that the Governor, through consultation with the State Workforce Investment Board and the Chief Elected Officials (CEOs)³, designates workforce investment areas. The Governor designated Luzerne and Schuylkill Counties together as the NE075 local workforce investment area.

The Luzerne County Board of Commissioners is the signatory for WIA funds for the Luzerne/Schuylkill workforce investment area. The County Commissioners designated the WIB as the lead entity responsible for WIA-funded activities in the local workforce investment area, and determined that the WIB should work in cooperation with the County WIDA concerning WIA-funded activities conducted in Luzerne County.

The WIB was incorporated as a Pennsylvania nonprofit corporation on September 16, 2006, and it consists of 43 members. The Luzerne County Commissioners appoint 24 members, the Schuylkill County Commissioners appoint 17 members and the remaining 2 members of the WIB are Commonwealth appointees. The members of the WIB are appointed to staggered, fixed terms of no more than four years. The members of the WIB can only be removed from their positions for violating the conflict of interest code.

The WIB is responsible for services to residents of Luzerne and Schuylkill Counties pursuant to Title I of the WIA for adult and dislocated worker services and youth programs (collectively Title I services). Additionally, the WIB serves as the conduit to provide services for the Pennsylvania Department of Public Welfare's Employment Advancement and Retention Network (EARN).⁴ The WIB oversees the spending of approximately \$10 million in federal and state funds.

Section 6250.501(b) of the WDA provides, in pertinent part, as follows:

Purpose. - The purpose of each local workforce investment board is to advise and assist the chief elected official in the county or counties served by the local workforce investment board by setting policy to promote effective workforce investment programs in a designated geographic area.

¹ 29 U.S.C. §§ 2801-2945.

² Act of December 18, 2001, P.L. 949, No. 114, as amended, 24 P.S. §§ 6250.101-6250.1502.

³ The Chief Elected Official is the chief elected executive officer of a unit of general local government in a local area such as the mayor of a city, the chairperson of the board of county commissioners, or the county executive in a home rule charter county. 29 U.S.C. § 2801(6)(A); 24 P.S. § 6250.103. Where a local area includes more than one unit of general local government, the CEO(s) are the individual(s) designated in a Chief Elected Official Agreement. 29 U.S.C. § 2801(6)(B). The CEOs in the Luzerne/Schuylkill workforce investment area are the Chairpersons of the Boards of Commissioners for Luzerne and Schuylkill Counties. (Joint Exhibit 3).

⁴ The EARN program provides employment and training services and activities to recipients of Temporary Assistance to Needy Families and Supplemental Nutrition Assistance Program benefits to help those recipients obtain the skills needed to acquire and retain employment. A Local Management Committee comprised of representatives from the County Assistance Office, the Bureau of Development Partnership, a local education agency, an economic development agency and the WIB in its capacity as fiscal agent for the County oversees, manages and directs the specific EARN programs provided in the County. (Joint Exhibit 6).

24 P.S. § 6250.501(b). Additionally, consistent with the WIA, the WIB's governing documents provide that the WIB and the Commissioners of both Counties must develop a workforce investment plan.

On February 20, 2007, the WIB issued a request for proposals for Title I youth activities to be provided in Luzerne County. On April 1, 2007, the WIB entered into a contract with the County WIDA, effective February 23, 2007 to June 30, 2010, for the County WIDA to provide Title I In-School and Out-of-School youth programs within the County. The County's current workforce investment plan, which was approved by the Pennsylvania Department of Labor and Industry (L&I) in October 2009, designated the County WIDA as the contractor providing WIA-funded services in Luzerne County.

On May 12, 2009, L&I officials released an audit report for the Luzerne/Schuylkill workforce investment area identifying several deficiencies. The audit detailed thirteen findings and requested that a corrective action plan be submitted. Richard Ammon, the Executive Director of the County WIDA, identified a corrective action plan to resolve the deficiencies. However, Mr. Ammon's corrective action plan failed to cure all identified deficiencies. At the time the deficiencies were first discovered, the County WIDA had been designated by Luzerne County Chairperson Maryanne Petrilla, in her capacity as the CEO of Luzerne County, as the fiscal agent for the County for purposes of WIA-funded programs. Effective November 16, 2009, Chairperson Petrilla changed the recipient of WIA funds to the WIB and gave it authority to control those funds. However, the County remained responsible for the misuse of WIA funds by the WIB for the Luzerne/Schuylkill workforce investment area.

On November 18, 2009, representatives of the WIB met with Chairperson Petrilla and her counterpart from the Schuylkill County Board of Commissioners, informing them of the WIB's decision to seek competitive bids for all of the programs overseen by the WIB in Luzerne County. At that meeting, the Chairpersons agreed that the WIB should seek competitive bids for those programs.

The current collective bargaining agreement between AFSCME and the County governing the wages, hours and working conditions of the residual unit was reached and ratified in August and September 2009. During negotiations for this agreement, the County did not propose any language concerning subcontracting of bargaining unit work.

In late 2009 or early 2010, AFSCME began hearing rumors that the County was considering contracting out residual bargaining unit work in the tax assessor's office. Union representatives met with Ms. Petrilla and Doug Pape, the County's Chief Clerk, to discuss the proposed subcontract of this work. Shortly after that meeting, AFSCME began hearing about additional possible subcontracts of bargaining unit work in other County departments. On January 28, 2010, David Antle, Director of AFSCME District Council 87, sent a letter to Ms. Petrilla formally demanding negotiations over any proposed subcontracts of bargaining unit work, and requesting that the County identify all bargaining unit work which it had subcontracted or was considering subcontracting. The County negotiated with AFSCME over the subcontracting of a number of bargaining unit positions and an agreement was reached concerning those positions. The County did not mention any intention to subcontract the work of the bargaining unit employees at the County WIDA office.

Shortly after the agreement was reached between the parties, Paula Schnelly, President of AFSCME's local affiliate in Luzerne County, began hearing more rumors of plans to contract out the bargaining unit work of the County WIDA employees. Ms. Schnelly spoke with Mr. Pape about these rumors and he suggested that she meet with Ms. Petrilla to discuss the matter.

On February 18, 2010, as a result of the County WIDA not correcting one of the problem areas, Christine Enright, Director of L&I's Bureau of Workforce Development Partnership, wrote to Ms. Petrilla concerning the outstanding problems. Ms. Enright directed Ms. Petrilla to outline a plan of corrective actions to be taken to clear up the problems. The WIB sent an outline of corrective actions to Ms. Enright in response to her letter.

On March 8, 2010,⁵ the WIB issued requests for proposals (RFPs) seeking bids from entities wishing to provide the services for Title I and EARN programs. Each of the RFPs indicated that the WIB's choice of contractor was subject to the approval of the County Commissioners. The WIB also stated at the meeting held with prospective bidders that its choice of a contractor for each of the three RFPs was subject to the approval of the County Commissioners.

In April 2010, Mr. Antle wrote another letter to Ms. Petrilla demanding negotiations over any intent by the County to subcontract work performed by employees of the County WIDA. The County did not respond to this letter.

On May 12, 2010, Bryon Noon of the Pennsylvania Department of Public Welfare wrote to the WIB Chair Martha Herron directing the WIB to award the EARN grant to the contractor that had been selected by the Local Management Committee and asserting that the failure to do so would violate a contractual obligation of the WIB. Mr. Noon's letter asserted that neither the WIB nor the County Commissioners could overturn the decision of the Local Management Committee as to the selection of a contractor for the EARN program.

On May 18, 2010, the WIB voted to recommend hiring three private companies to provide Title I and EARN services for Luzerne and Schuylkill Counties. The County WIDA submitted proposals in response to the WIB's March 8, 2010 RFPs, but was not chosen by the WIB to be the provider of Title I and EARN services in Luzerne County. The same day, the WIB issued a press release stating that its recommendation concerning the award of contracts for Title I and EARN services would be made to the Luzerne and Schuylkill County Commissioners for their concurrence. However, the County Commissioners did not take any action on the awarding of the proposed contracts recommended by the WIB. The WIB proceeded to enter into the contracts.

Effective July 1, 2010, the Title I and EARN services in Luzerne County were being provided by the ReDCo Group, Arbor Employment and Training and Educational Data Investment Services. The County WIDA employees were subsequently laid off.

The Union filed its Charge of Unfair Practices on May 27, 2010, alleging that the County, through its agents, violated Section 1201(a)(1) and (5) of PERA by issuing RFPs to subcontract bargaining unit work of the County WIDA employees and by subsequently subcontracting that work without bargaining with AFSCME. Hearings were held before the Board's Hearing Examiner on September 23, 2010 and October 8, 2010, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The Hearing Examiner determined that the County was liable for the actions of the WIB in subcontracting the bargaining unit work of the County WIDA employees because the County allegedly retained control over the decision to subcontract the work, citing Lewistown Police Association v. Mifflin County Regional Police Department, 26 PPER ¶ 26137 (Final Order, 1995), aff'd sub nom., Borough of Lewistown v. PLRB, 558 Pa. 141, 735 A.2d 1240 (1999). The Hearing Examiner stated that, similar to Mifflin County Regional Police, the WIA and WDA authorize Luzerne and Schuylkill Counties to join efforts to provide workforce development services through a regional entity, the WIB, and that the County retained certain responsibilities and obligations in implementing the services to be provided to the Luzerne/Schuylkill workforce investment area. The Hearing Examiner further stated that the most relevant of the County's retained responsibilities was the requirement that the WIB obtain the approval of the County when selecting or terminating "One-Stop operators".⁶ The Hearing Examiner additionally relied upon the fact that the

⁵ The Board notes that Finding of Fact 23 contains a typographical error mistakenly stating that the WIB issued the RFPs on March 8, 2009. The testimony cited by the Hearing Examiner, and the record as a whole, indicates that the RFPs were issued on March 8, 2010. Therefore, Finding of Fact 23 is hereby amended to reflect the correct date that the RFPs were issued.

⁶ The One-Stop operator is a single entity or a consortium of entities which oversees the operation of the one-stop center (PA CareerLink) by coordinating service providers within the center or coordinating activities throughout the One-Stop system. 29 U.S.C. § 2841(d)(2)(A)-(B); 20 CFR § 662.400(b)-(c).

WIB is to carry out the WIA functions in partnership with the County and that the WIB indicated throughout the RFP process that its recommendation of contractors to provide Title I and EARN services would be made to the County Commissioners for their approval. Therefore, the Hearing Examiner concluded that the County was required to bargain with AFSCME over subcontracting of the bargaining unit work of the County WIDA employees. Accordingly, the Hearing Examiner held that the County violated Section 1201(a)(1) and (5) of PERA. By way of remedy, the Hearing Examiner ordered the County to rescind the contracts; to return the work to the County WIDA employees; to make the bargaining unit employees whole for all lost wages and benefits; and to offer to bargain with AFSCME over subcontracting of the work performed by the County WIDA employees.

In its exceptions, the County initially argues that the Hearing Examiner erred in making certain findings of fact and in failing to make other findings. Specifically, the County alleges that Findings of Fact (FF) 11 and 22 should be overturned because they are not supported by the record. The Board concludes that the first sentence of FF 11 should be deleted as it is a legal conclusion, not a finding of fact. The Board further concludes that FF 22 should be amended to more accurately reflect the evidence of record indicating that the WIB made the decision to seek competitive bids for Title I and EARN services and that the Chairpersons of Luzerne and Schuylkill Counties agreed with the WIB's decision. Accordingly, we have amended those findings as set forth above.

With regard to the other findings proposed by the County, the Hearing Examiner must set forth those findings that are relevant and necessary to support the conclusion reached, but need not make findings summarizing all the evidence presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). The Board has determined that some additional findings are necessary to resolve the issues presented in this case. However, the Board has declined to make other findings suggested by the County because they are not necessary or relevant to the conclusion reached in this order.

The County further alleges in its exceptions that the Hearing Examiner erred in concluding that it was required to bargain with AFSCME over subcontracting of the bargaining unit work of the County WIDA employees because the WIB, not the County, subcontracted the work. The County additionally alleges that the Hearing Examiner's conclusion that the WIB is an agent of the County is not supported by the record because the WIB retains sole authority to choose the providers of Title I and EARN services, citing Section 2832(d)(3)(B)(i)(III) of the WIA. 29 U.S.C. § 2832(d)(3)(B)(i)(III). The County asserts that the Hearing Examiner's determination that the County was required to approve the WIB's selection of Title I and EARN services contractors is based on an erroneous understanding that One-Stop operators are the same as Title I and EARN services contractors. The County also asserts that the Hearing Examiner erred in relying on Mifflin County Regional Police, *supra*, as the facts in that case are distinguishable.

The Board has held that the issue of subcontracting bargaining unit work is a mandatory subject of bargaining. Morrisville School District v. PLRB, 687 A.2d 5 (Pa. Cmwlth. 1996), appeal denied, 549 Pa. 708, 700 A.2d 445 (1997). Good faith bargaining requires the parties to make a serious effort to resolve differences and to reach common ground. Snyder County Prison Board v. PLRB, 912 A.2d 356 (Pa. Cmwlth. 2006), appeal denied, 593 Pa. 730, 928 A.2d 1292 (2007). In that respect, a public employer has the obligation to bargain in good faith to a bona fide impasse before subcontracting any bargaining unit work. Id.

Here, the decision to subcontract the bargaining unit work of the County WIDA employees was made by the WIB, not the County. However, AFSCME argues that the WIB is merely an agent acting on behalf of the County and, therefore, the County is liable for the actions of the WIB. An agency relationship arises where (1) there is a manifestation by the principal that an agent shall act for it; (2) an acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal is in control of the undertaking. Scott v. Purcell, 490 Pa. 109, 415 A.2d 56 (1980). The burden of proving an agency relationship is on the party asserting such a relationship. Id.; see also Teamsters Local 77 v. Delaware County, 29 PPER ¶ 29087 (Final Order, 1998), aff'd sub nom., County of Delaware v. PLRB, 735 A.2d 131 (Pa. Cmwlth. 1999), appeal denied, 561 Pa. 679, 749 A.2d 473 (2000). Where, as here, it is alleged that a public

employer violated its duty to bargain through the actions of a third party, the Board looks to whether the public employer had control over the third party with respect to the particular actions at issue. Ellwood City Police Wage and Policy Unit v. Ellwood City Borough, 29 PPER ¶ 29214 (Final Order, 1998), aff'd sub nom., Ellwood City Police Wage and Policy Unit v. PLRB, 731 A.2d 670 (Pa. Cmwlth. 1999)(city did not violate its duty to bargain because police officers lost overtime opportunity due to independent action of district justice over which city did not exercise control); see also PSSU, Local 668, SEIU v. Commonwealth of Pennsylvania, Department of Labor and Industry, 30 PPER ¶ 30182 (Final Order, 1999)(Commonwealth did not violate its duty to bargain because it had no control over pre-existing smoking restriction imposed by County); Pennsylvania State Park Officers Association v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, 38 PPER 20 (Proposed Decision and Order, 2007)(Commonwealth did not violate its duty to bargain because it had no control over how 911 Center dispatched calls to park rangers); PSSU Local #668 SEIU v. Commonwealth of Pennsylvania, 34 PPER 91 (Proposed Decision and Order, 2003)(Commonwealth did not violate its duty to bargain because smoking restriction was imposed by the site administrator over which Commonwealth did not exercise control); PSSU Local #668 SEIU v. Commonwealth of Pennsylvania, Department of Public Welfare, 33 PPER ¶ 33185 (Proposed Decision and Order, 2002)(Commonwealth did not violate its duty to bargain because smoking restriction was imposed by private, non-profit lessor over which Commonwealth did not exercise control).

The particular action at issue in this case is the decision to award the Title I and EARN services work to non-County entities. A review of the WIA and WDA, along with the record, reveals that the County did not have control over the WIB's decision to subcontract the bargaining unit work of the County WIDA employees. As stated by the Hearing Examiner, this case involves an extensive statutory scheme which governs the Pennsylvania workforce investment system. Pursuant to the WIA and WDA, each workforce investment area is required to establish a local workforce investment board which serves to advise and assist the CEO(s) by setting policy to promote effective workforce investment programs in those areas. 29 U.S.C. § 2832(a); 24 P.S. § 6250.501(b). The CEOs of the Luzerne/Schuylkill workforce investment area appoint the members of the WIB to staggered, fixed terms of no more than four years. 29 U.S.C. § 2832(c)(1)(B)(i)(I)-(II); 24 P.S. § 6250.502(b)(2); Joint Exhibit 2; Union Exhibit 11. The CEOs are required to appoint members to the WIB who represent businesses, educational institutions, labor organizations or employees, community-based organizations, economic development entities and One-Stop delivery system partners. 29 U.S.C. § 2832(b)(2)(A)(i)-(vi); 24 P.S. § 6250.502(a)(1)(i)-(viii). The CEOs can only remove the members of the WIB for violating the conflict of interest code. Joint Exhibit 4. Therefore, the members of the WIB are not removable at the pleasure of the CEOs. See Bowers v. PLRB, 402 Pa. 542, 167 A.2d 480 (1961)(Board members not removable at Governor's pleasure as statute provides that members shall be appointed to fixed terms with staggered expiration dates).

The WIB works with the CEOs to develop a local plan (29 U.S.C. § 2832(d)(1)); to select One-Stop operators (29 U.S.C. § 2832(d)(2)(A)); to conduct oversight of Title I programs (29 U.S.C. § 2832(d)(4)); and to appoint a Youth Council (29 U.S.C. § 2832(h)(1)). The WIB's budget is approved by the CEOs. 29 U.S.C. § 2832(d)(3)(A). However, the WIB is solely responsible to identify eligible providers of youth activities and training and intensive services for adult and dislocated workers. 29 U.S.C. § 2832(d)(2)(B)-(D); 29 U.S.C. § 2843; Joint Exhibit 3. Further, the WIB's authority to enter into contracts with service providers stems from Section 2832(d)(2)(B)-(D) of the WIA and Section 6250.504(b)(7)(ii)(B) of the WDA, not from the WIB's designation as the fiscal agent for the County. 29 U.S.C. § 2832(d)(2)(B)-(D); 24 P.S. § 6250.504(b)(7)(ii)(B). Consistent with the provisions of the WIA and WDA, the Chief Elected Official and Local Workforce Investment Agreement authorizes the WIB to choose providers of Title I services and award contracts to those providers. Joint Exhibit 3. Additionally, Section 2832(d)(3)(B)(i)(III) of the WIA and Section 6250.501(c)(3) of the WDA state that the local grant recipient (the County) or its fiscal agent must disburse funds at the direction of the local board (the WIB). 29 U.S.C. § 2832(d)(3)(B)(i)(III); 24 P.S. § 6250.501(c)(3). Therefore, the duties of the fiscal agent are merely to disburse the WIA funds to the providers chosen by the WIB and do not include entering into contracts for Title I and EARN services.

Moreover, as conceded by AFSCME, the Hearing Examiner misinterpreted the term "One-Stop operators" for purposes of the WIA to be equivalent to contractors of Title I and EARN services. Indeed, the Hearing Examiner's conclusion that the County had the duty to bargain over the transfer of work from the County WIDA to other providers is based upon his erroneous conclusion that One-Stop operators are the same as contractors of Title I and EARN services. (PDO at 8-9). However, the One-Stop operator oversees the operation of the one-stop center (PA CareerLink) by coordinating service providers within the center or coordinating activities throughout the One-Stop system. Here, the WIB awarded contracts to private entities to provide Title I and EARN services in the One-Stop center. Because the WIB was not selecting a new One-Stop operator, the Hearing Examiner erred in concluding that the County exercised control over the decision of the WIB and retained responsibility to bargain over the WIB's decision to utilize other providers to perform Title I and EARN services that were formerly performed by the County WIDA employees. This case does not involve unilateral subcontracting by the County because the County itself bid on the work, and the WIB, not the County, decided to no longer utilize County employees to perform the work. Because AFSCME failed to prove that the County controlled the WIB, it failed to establish that the WIB is the County's agent and that the County is somehow responsible for the WIB's independent decision to contract the work at issue to non-County employees.

Further, the facts of Mifflin County Regional Police, *supra*, are distinguishable from the present case. In Mifflin County Regional Police, three municipalities entered into an intergovernmental agreement to jointly provide police services through a regional police department (Regional). The municipalities delegated power to the Regional giving it authority to hire, fire and supervise the police officers and to administer the officer's pension plan. Lewistown Borough refused to comply with the pension provision in an interest arbitration award between the union and the Regional. The Board held that the municipalities comprising the Regional were joint employers for purposes of Act 111 and the Pennsylvania Labor Relations Act as they retained control over the functions of the Regional. Therefore, Lewistown Borough, as a participating municipality, was required to comply with the provisions of the interest arbitration award.

In contrast, the WIB works independently of the County Commissioners of both Luzerne and Schuylkill Counties in carrying out the relevant duties and responsibilities provided to it under the WIA and WDA. Further, the Commissioners of Luzerne and Schuylkill Counties are not members of the WIB as was the case in Mifflin County Regional Police, *supra*, where members of the constituent municipalities' governing board made up the entire membership of the board of directors of the Regional. Indeed, the members of the WIB are representatives of businesses, educational institutions, labor organizations or employes, community-based organizations, economic development entities and One-Stop delivery system partners. 29 U.S.C. § 2832(b)(2)(A)(i)-(vi); 24 P.S. § 6250.502(a)(1)(i)-(viii). The members of the WIB are appointed to fixed terms of office and do not simply serve at the pleasure of the County Commissioners. In this regard, they are not unlike members of a municipal authority who are appointed by the governing board of the municipality but the authority remains a separate and distinct entity. See Commonwealth v. Lucas, 534 Pa. 293, 632 A.2d 868 (1993)(holding that a member of a municipal authority board is not "an appointive township office or position" for purposes of the Second Class Township Code because municipal authorities are not the creatures, agents or representatives of the municipalities that organize them but are independent agencies); see also Teamsters Local 764 v. Milton Regional Sewer Authority, 34 PPER 159 (Final Order, 2003)(borough sewer authority was not alter ego of the borough because sewer authority is a separate, independent body not controlled by the borough); Laborers' District Council of Western Pennsylvania, Laborers' Local 1058 v. Penn Township, 29 PPER ¶ 29134 (Proposed Decision and Order, 1998)(township did not commit an unfair practice by creating a sewer authority to maintain and operate sewer system because sewer authority was separate entity not controlled by township). Most importantly, the WIB is statutorily authorized by the WIA and WDA to choose service providers without the approval of the County Commissioners. 29 U.S.C. § 2832(d)(2)(B)-(D); 29 U.S.C. § 2832(d)(3)(B)(i)(III); 24 P.S. § 6250.501(c)(3); 24 P.S. § 6250.504(b)(7)(ii)(B).

As such, this case is more analogous to the Board's decisions in Ellwood City Borough, *supra*, and Pennsylvania State Park Officers Association, *supra*. In Ellwood City

Borough, the borough provided the schedules of its police officers to the District Justice and requested that the District Justice schedule hearings during the officers' shifts in order to avoid the payment of overtime. The Board concluded that the borough did not violate its duty to bargain in good faith because the District Justice, not the borough, changed the schedules. The Board held, and the Commonwealth Court agreed, that the borough's action in requesting the change was not an unfair practice because the borough did not control the District Justice's scheduling of hearings. Similarly, in Pennsylvania State Park Officers Association, the Board's Hearing Examiner held that the Commonwealth did not transfer the bargaining unit work of responding to law enforcement 911 calls to non-bargaining unit employees because the York County 911 Center dispatches the calls. The Hearing Examiner noted that although the Commonwealth issued a list to the 911 Center indicating its preference that bargaining unit employees be dispatched for law enforcement matters, the Commonwealth had no control over how the 911 Center dispatched the calls.

Likewise, it is of no moment whether the County Commissioners approved or disapproved of the WIB's choice of providers for Title I and EARN services because the WIB has sole authority under the WIA and WDA to choose those providers. Ellwood City Borough, supra; Pennsylvania State Park Officers Association, supra. Further, the WIB's statements that its recommendation of service providers would be made to the Commissioners of Luzerne and Schuylkill Counties is irrelevant because the WIB was not required under the WIA, the WDA or the governing documents of the parties (Joint Exhibits 1 and 3) to obtain the approval of the County Commissioners. Indeed, the County Commissioners did not take any action to approve or disapprove the providers selected by the WIB, and the WIB, rather than the County Commissioners, entered into the contracts with the providers chosen by the WIB for the services at issue.⁷

Additionally, as asserted by the County, the WIA requires that youth activities be awarded through a competitive bidding process. 29 U.S.C. § 2832(d)(2)(B); 29 U.S.C. § 2843. As reflected in the record, the WIB has sought bids for youth services in the past and the County WIDA participated in that process. In 2007, the WIB and the County WIDA entered into a contract, effective from February 23, 2007 to June 30, 2010, in which the County WIDA agreed to provide Title I In-School and Out-of-School youth programs. Given that youth services are required to be competitively bid, the County WIDA employees could not have an expectation that this work would necessarily continue as it would violate the competitive bidding requirement in the WIA if the County WIDA was automatically awarded the contract for those services. In that respect, the WIB was required to seek competitive bids for youth activities.

Concerning Title I adult and dislocated worker and EARN services, even if the County Commissioners had decided to seek RFPs for those services, such action would not violate the County's duty to bargain under Section 1201(a)(5) of PERA. Lower Dauphin School Service Personnel Association, PSSPA/PSEA v. Lower Dauphin School District, 19 PPER ¶ 19195 (Final Order, 1988)(public employer does not violate its duty to bargain in good faith where it investigates the possibility of subcontracting or solicits bids for subcontracting); PLRB v. Lawrence County Housing Authority, 13 PPER ¶ 13161 (Proposed Decision and Order, 1982)(same); PLRB v. School District of the Township of Millcreek, 9 PPER ¶ 9136 (Nisi Decision and Order, 1978)(same). Moreover, the decision to seek competitive bids was made by the WIB, not the County. The County, at best, concurred with the WIB's decision. It is also important to note that the County WIDA, the County's own agency, bid on the work in an effort to preserve the work for the bargaining unit employees. However, the County WIDA was not selected to perform the work by the WIB. As such, the Hearing Examiner erred in concluding that the County violated Section 1201(a)(1) and (5) of PERA because AFSCME failed to prove that the County controlled the WIB's selection of non-County providers for the work at issue. Accordingly, we must vacate the conclusion in the PDO that the County violated Section 1201(a)(1) and (5) of PERA.

⁷ Given this statutory scheme, it is impossible for the County to carry out the Hearing Examiner's direction for the County to rescind the contracts between the WIB and the service providers and return the work to the County WIDA.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall sustain the County's exceptions and set aside the Proposed Decision and Order consistent with the above discussion.

CONCLUSIONS

CONCLUSIONS 1 through 3 of the Proposed Decision and Order are affirmed and incorporated herein by reference.

CONCLUSION 4 is vacated and set aside and the following additional conclusion is made:

5. The County has not committed unfair practices within the meaning of Section 1201(a)(1) and (5) of PERA.

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 Luzerne County are hereby sustained, and the Order on pages 10-11 of the PDO is vacated. It is further Ordered that the Charge of Unfair Practices be and hereby is dismissed, and the Complaint issued thereon is rescinded.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman and James M. Darby, Member, this seventeenth day of April, 2012. 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.