

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NESHANNOCK EDUCATION :
SUPPORT PROFESSIONALS, PSEA/NEA :
 :
v. : Case No. PERA-C-11-441-W
 :
NESHANNOCK TOWNSHIP SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On December 22, 2011 the Neshannock Education Support Professionals, PSEA/NEA (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Neshannock Township School District (District or Respondent) alleging that the District violated sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by transferring the work of the Science Lab Coordinator outside the bargaining unit.

On January 17, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on May 30, 2012 in Pittsburgh before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was held as scheduled date at which time the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

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

FINDINGS OF FACT

1. The Neshannock Township School District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)
2. The Neshannock Educational Support Professionals, PSEA/NEA is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 8)
3. The Association is the exclusive representative of all full-time and regular part-time nonprofessional employes of the District, including the Science Lab Coordinator. The Board certified the Association as the exclusive representative in January 2, 2008 at Case No. PERA-R-07-523-W granting a joint petition for representation that sought to accrete the secretaries and paraprofessionals into the existing nonprofessional unit certified at PERA-R-94-304-E. (N.T. 85, Association Exhibit A, Board Exhibit 10)
4. The District and the Association are parties to a collective bargaining agreement (CBA) effective July 1, 2011 through June 30, 2015. (N.T. Association Exhibit A)
5. From the fall of 1993 through the end of the 2010-2011 school year, Suzanne Lagnese was employed as the Science Lab Coordinator at the District's Elementary School. The position earlier had been known as Science Lab aide. When the name of the position was changed, the duties and responsibilities associated with it were not affected. (N.T. 10, 11, 37)
6. The Science Lab was a room in the Elementary School which could be utilized by teachers in order to facilitate "hands-on" instruction in the subject of science. The teaching staff was not necessarily required to use the lab, but

consistently did so because of its convenience and amenability for the performance of science experiments. (N.T. 47-48, 73)

7. During Ms. Lagnese's tenure as the Science Lab Coordinator, science experiments were generally conducted in the Science Lab. However, there was a time before the certification of the Association in 2008 during which Mr. Lagnese used a cart to transport materials and perform experiments in individual classrooms because the lab was under construction. (N.T. 32, 42-43)
8. Ms. Lagnese worked thirty-five hours per week in the Science Lab Coordinator position, at a rate of pay for the 2010-2011 school year of \$11.74 per hour. (N.T. 11, 27-28).
9. Ms. Lagnese job duties as Science Lab Coordinator included, *inter alia*, maintaining the Science Lab by organizing materials; procuring items needed in order to conduct science labs or experiments; maintaining a schedule for lab usage by teachers; preparing for and setting up science experiments for elementary school teachers and students; assisting the teachers and students with those experiments as needed; and tearing down science experiments after completion, cleaning up the lab as necessary, and putting materials away. (N.T. 10, 14-22)
10. The testimony of Ms. Lagnese, First Grade Teacher Rebecca Harlan, and Fourth Grade Teacher Sandra Giordano establishes the prior allocation of responsibility among Ms. Lagnese and the Elementary School teachers as it relates to the use of the Science Lab. Ms. Lagnese worked in conjunction with the teachers in order to select and plan science experiments to be performed by a specific teacher and class. (N.T. 17-18)
11. Ms. Lagnese would often assist teachers in conducting science experiments with students. (N.T. 21, 300)
12. Ms. Lagnese was also exclusively responsible for purchasing supplies needed for science experiments, either by ordering those items through a science company, or using a District-issued credit card to purchase "consumable" items at Wal-Mart. (N.T. 18,21)
13. Ms. Lagnese exclusively prepared or "set up" the lab for specified experiments, except for a "handful of times" in her eighteen years in the position when a teacher helped her set up an experiment. (N.T. 18)
14. Ms. Lagnese was exclusively responsible for cleaning up or "tearing down" the experiments after completion, except for infrequent occasions when teachers would ask their students to assist in clearing off tables so that Ms. Lagnese could prepare for the next class coming in to use the lab. (N.T. 22, 30, 34, 43-44, 50-51).
15. Ms. Lagnese was exclusively responsible for completing all laminating projects using the Elementary School's laminator, which was stored in the Science Lab. (N.T. 23, 97)
16. On May 24, 2011, the District's Board of Directors took action to eliminate the position of Science Lab Coordinator and to furlough Ms. Lagnese effective June 30, 2011. (N.T. 12, 13, 85, Association Exhibits A, B and C)
17. By letter dated June 10, 2011, PSEA Uniserve Representative Leslie Kitsko expressed prospective concerns to Superintendent Mary S. Todora about the potential diversion of bargaining unit work previously performed by the Science Lab Coordinator and other eliminated positions. (N.T. 82, 85 Association Exhibit J)

18. In the letter, Ms. Kitsko stated, "[t]he Administration cannot assign bargaining unit work to personnel outside of the bargaining unit and must act vigilantly to ensure that no bargaining unit work is given to non-bargaining unit personnel." (N.T. 82, 85, Association Exhibit J)
19. In response to this letter, Dr. Todora, by email to Ms. Kitsko dated June 13, 2011, stated that "[a]s far as the Science Lab Coordinator goes, teachers are required to teach science and as doing such, they are going to need to take kids in the lab for experiments." (N.T. 82, 85, Association Exhibit K)
20. Teachers are not members of the bargaining unit represented by the Association. Teachers are represented by a separate exclusive representative. (N.T. 12, 80, 85, 119, Board Exhibit 1, Association Exhibit A)
21. At this time, the District did not bargain with the Association regarding the subject of assigning work previously performed by the Science Lab Coordinator to members of the teaching staff. (N.T. 117-118)
22. After the start of the 2011-2012 school year, and with the elimination of the Science Lab Coordinator position, the Association was advised that teachers and parent volunteers had performed duties which had previously been performed by Ms. Lagnese in her role as the Science Lab Coordinator. (N.T. 82, 85, Association Exhibit I)
23. At that point, it was unclear whether the District's administration had assigned teachers to perform the work of the Science Lab Coordinator. On October 4, 2011, Ms. Kitsko alerted Elementary School Principal Matt Heasley to this issue, and reiterated the Association's position that bargaining unit work could not be assigned outside the bargaining unit. (N.T. 82, 85, Association Exhibit I)
24. Upon receipt of this letter, Mr. Heasley contacted Dr. Todora; but again, no negotiations regarding the removal of bargaining unit work from the unit took place. (N.T. 103)
25. For the 2011-2012 school year, the Science Lab was moved from its previous location to a vacant art room in the Elementary School building. In and around October of 2012, Mr. Heasley asked Ms. Lagnese to assist in organizing the Science Lab so that teachers could more easily locate materials. (N.T. 25, 27)
26. Mr. Lagnese performed this work in increments of three to four hours, for a total of forty hours of work. (N.T. 25)
27. Ms. Lagnese was compensated at her hourly rate from the 2010-2011 school year for those forty hours, or \$11.74 per hour. (N.T. 27-28)
28. On October 18, 2012, Mr. Heasley held a meeting with the Science Committee, which included one teacher from each grade at the Elementary School level and Mr. Heasley. (N.T. 46, 54, 85, Association Exhibit E)
29. The conversation that occurred during this meeting was memorialized in an email from Mr. Heasley dated November 10, 2011. (N.T. 54, 85, Association Exhibit E)
30. At this meeting, Mr. Heasley informed the committee members that staff needed to continue on with the science curriculum. (N.T. 51)
31. Thus, the staff members were encouraged to continue to conduct science experiments with their students. (N.T. 53)
32. The committee discussed various ideas about "filling the void" left by the elimination of Mr. Lagnese's position. (N.T. 46, 54, 85, Association Exhibit E)

33. If materials were needed, the teachers were instructed to purchase the materials and to submit receipts for reimbursement. (N.T. 54, 85, Association Exhibit E)
34. The committee also decided that staff would use packaged experiments provided through Science in Motion, a program administered by Westminster College, and through the Penn State Cooperative Extension Agency. (N.T. 54, 65-66, 85, Association E)
35. At the same meeting, the teachers were told that they may use parent volunteers to assist in preparing for and cleaning up after experiments. (N.T. 53, 54, Association Exhibit E)
36. The elementary teaching staff followed Mr. Heasley's instructions and performed science experiments both in the newly relocated Science Lab and their own classrooms.
37. Ms. Harlan conducted experiments in the Science Lab for a total of three to five times in the 2011-2012 school year. (N.T. 55)
38. Ms. Harlan and the other Elementary School teachers used a "sign-up" calendar in order to notify other teachers that they intended to use the lab on a certain date and at a specified time. The calendar shows that Ms. Harlan used the Science Lab on November 17, 2011, November 21, 2011 and February 1, 2012. (N.T. 55-56, Association Exhibit F)
39. In using the lab, Ms. Harlan was required to set up the lab herself and to clean up afterwards. (N.T. 56)
40. Ms. Harlan also performed experiments in her classroom as well because it was often logistically easier in that she did not have to take her students out of her classroom. However, even in the classroom based experiments, Ms. Harlan was responsible for setting up the labs herself, cleaning up afterwards and returning materials to the lab. (N.T. 57)
41. Ms. Giordano testified that she had performed roughly twelve to fourteen science experiments in the 2011-2012 school year. (N.T. 77)
42. One experiment had been performed in the Science Lab, while the others were performed in her classroom. (N.T. 77)
43. Ms. Giordano was required to set up and clean up after experiments in all instances. (N.T. 77-79)
44. Parent volunteers also assisted teachers in the set-up and clean-up of experiments in the 2011-2012 school year. (N.T. 103-104)
45. Teachers purchased items for use in science experiments as needed. (N.T. 60, 77)
46. In the 2011-2012 school year, the laminator for the Elementary School was moved from the Science Lab to the Elementary School office. Instructions for its use were posted nearby, and members of the teaching staff were informed that they should use the laminator themselves. (N.T. 61)

DISCUSSION

The Association's charge of unfair practices alleges that the District violated Section 1201(a)(1) and (5) of the Public Employe Relations Act when it began assigning the duties that had been performed by the science Lab Coordinator, in the nonprofessional unit to teachers in the professional unit.

A public employer violates Section 1201(a)(1) and (5) of PERA when it unilaterally transfers work exclusively performed by bargaining unit members to non-members of the bargaining unit. **PLRB v. Mars Area School District**, 480 Pa. 295, 389 A.2d 1073 (1978). The public employer desiring to transfer bargaining unit work has an "affirmative duty to seek out the representatives of its employes, announce its intentions and provide the employe representative with relevant information necessary for it to fulfill its bargaining obligation." **Faculty Fed. of Comm. College of Philadelphia Local 2026, AFT AFL-CIO v. Philadelphia Community College**, 25 PPER ¶25172 (Proposed Decision and Order, 1994), citing **AFSCME, District Council 89 v. Lancaster County**, 24 PPER ¶ 24054 at 132 (Final Order, 1993)

A party asserting an unfair practice must prove the elements of the alleged violation by substantial and legally credible evidence. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977).

In the present case, there are no factual disputes. On May 24, 2011, the District furloughed the long-time Science Lab Coordinator, Suzanne Lagnese. Ms. Lagnese had done a myriad of tasks that made a Science Lab feasible and a valuable component of the elementary school science curriculum. Simply put, the work the Science Lab Coordinator performed of setting up, running and cleaning up the science lab, allowed the science teachers to teach science.

After learning of the furlough, the Association notified the District that any transfer of Ms. Lagnese' work outside the bargaining unit would be met with a legal challenge. Despite this warning, the District began assigning persons outside the bargaining unit to do the work that had previously been done exclusively by Ms. Lagnese. Two teachers, Ms. Harlan and Ms. Giordano, testified that they are doing science lab work that had been the exclusive work of the Science Lab Coordinator before she was furloughed. Also, they testified that parent volunteers have also done the work. When the Association learned that the District actually transferred the work, it again protested to the District that the transfer of the work was against the law. However, the District was not deterred.

The District contends that its decision to use teachers and volunteers to do the Science Lab Coordinator's work was necessitated by the District's cost cutting and should not be hindered by PERA's duty to bargain. The District argues that its decision is a "matter of inherent managerial policy," under Section 702 of PERA, specifically "its overall budget" the "organizational structure" and the "selection and direction of personnel." 43 P.S. 1101.702. The District argues that the charge should be dismissed.

The District's argument might be valid if the District had eliminated science labs from the elementary school science curriculum entirely. However, the District has kept the science labs in the curriculum but chosen a less expensive way to provide this service that eliminated a bargaining unit position. Such an economic decision falls squarely within Section 701 of PERA as a mandatory subject of bargaining. **Mars Area School District, supra**. The District's unilateral decision of transferring the work of the Science Lab Coordinator outside the bargaining unit violates the District's duty to bargain with the Association.

CONCLUSIONS

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

1. The Neshannock Township School District is a public employer under section 301(1) of the PERA.
2. The Neshannock Educational Support Professionals, PSEA/NEA is an employee organization within the meaning of Section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.

4. The District has 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 District shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Cease and desist from transferring bargaining unit work, including but not limited to the work of the Science Lab Coordinator.
4. Take the following affirmative action:
 - a. Offer to reinstate Suzanne Lagnese to the position of Science Lab Coordinator and make her whole for the all lost wages and benefits she would have earned had she not been furloughed;
 - 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 employes 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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twelfth day of October, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner