

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ABINGTON EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-00-366-E
 :
 ABINGTON SCHOOL DISTRICT :

FINAL ORDER

On May 4, 2001 the Abington Education Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to an April 19, 2001 Proposed Decision and Order (PDO). The Abington School District (District) filed its responsive brief on May 21, 2001. In the PDO, the Hearing Examiner concluded that the District did not violate Section 1201(a)(5) of the Public Employe Relations Act (PERA) when it assigned classroom teaching duties to a building principal for the 2000-2001 school year without prior negotiation with the Association. The Association set forth twelve proposed findings of fact in its brief in support of exceptions, but because the Association does not challenge any of the Hearing Examiner's Findings of Fact, the Board adopts those Findings in the PDO and disregards the Association's proposed findings. The Board's hearing examiners are not required to make findings summarizing all of the evidence presented in the record. Rather, an examiner need only make those findings that are both relevant to the decision and necessary to resolve the issues presented. See Page's Dep't Store v. Velardi, 464 Pa. 276, 346 A.2d 445 (1975); AFSCME, Council 13 v. Office of Attorney General, 30 PPER ¶ 30214 (Final Order, 1999). The Hearing Examiner's Findings of Fact are fully supported by substantial evidence in the record and accurately reflect the underlying facts necessary to decide the issues presented in this case, as required by the Supreme Court in PLRB v. Kaufmann Dep't Stores, Inc., 345 Pa. 398, 29 A.2d 90 (1942) and his failure to make the additional proposed findings was not error.

The Association represents a collective bargaining unit comprised primarily of the District's teachers. The unit does not include principals, supervisors, coordinators or department chairpersons. When the District assigned classroom teaching duties to a building principal for the 2000-2001 school year, the Association filed a Charge of Unfair Practices asserting that the District violated Section 1201(a)(5) by unilaterally transferring that bargaining unit work to a non-bargaining unit member. The Hearing Examiner found that an assistant superintendent, a principal, two assistant principals, as well as several department coordinators and department chairpersons have engaged in classroom teaching without objection by the Association, since the Association was certified as the collective bargaining representative in 1971.¹

¹ An assistant superintendent taught courses during the latter part of the 1970's. A principal taught courses during the latter part of the 1970's. Two assistant principals performed teaching duties during the 1970's. Department coordinators and supervisors have performed classroom teaching duties since 1974. Department chairpersons have

In Wyoming Valley West Educ. Support Personnel Ass'n v. Wyoming Valley West Sch. Dist., 32 PPER ¶ 32008 (Final Order, 2000), the Board explained that it will find a violation of Section 1201(a)(5) of PERA when: (1) an employer unilaterally removes work exclusively performed by the bargaining unit without prior negotiation; (2) an employer significantly alters its past practice regarding the assignment of bargaining unit work to non-unit members without prior negotiation; or (3) if an employer varies the extent to which members and non-members have performed the same work without prior negotiation. Id. (citations omitted). The Hearing Examiner concluded that the Association failed to meet its burden of proving that the District violated PERA under any of these three scenarios.

As discussed above, it is undisputed that members of the bargaining unit have never exclusively performed the District's classroom teaching duties. The remaining two scenarios involve situations where both bargaining unit members and nonmembers have performed the work at issue. While it admits that nonmembers of the bargaining unit (supervisors, department coordinators and department chairpersons) have performed teaching duties since its certification in 1971, the Association argues that principals and administrators have not performed this work since 1977. Based on this argument, the Association asserts that the unilateral assignment of classroom teaching duties to a principal without bargaining is an unlawful transfer of bargaining unit work because it "constitutes a significant change in the established practice of assigning bargaining unit work." (Assoc. Br. at 5.) The Board rejects this argument.

The Board's focus is on whether bargaining unit work was unlawfully transferred out of the unit without negotiation. The Board's analysis does not differentiate between individual assignments to nonmembers. Whether the nonmember is a principal, administrator or some other classification (such as supervisor, department coordinator or department chairperson) is not relevant to the Board's analysis. The record reflects that the District's administrators and principals performed classroom teaching duties throughout the 1970's and its supervisors, department coordinators and department chairpersons have performed classroom teaching duties continuously from the 1970's to the present. For example: an assistant superintendent, an assistant principal and a principal taught courses during the latter part of the 1970's; the supervisor of nursing services performed classroom teaching duties from 1974 through 1993; the supervisor of gifted education taught from 1992-1996; and the coordinator of mathematics taught from 1984-1985; the senior high social studies chairperson taught from 1972-1997; the modern and classic languages chairperson has taught since 1977; the reading chairperson taught from 1972-1993; the junior high English chairperson has taught since 1983; the technology education chairperson has taught since 1995; the senior high mathematics chairperson has taught since 1984; and the senior high English chairperson has taught since 1992. (PDO, F.F. 9-10; District, Ex. 9.) Department chairpersons were assigned at classes as recently as the 2000-2001 school year. Association President Phyllis Pertnoy testified that in the 25 years that she has been active with the Association, it

performed classroom teaching duties since at least 1972 and were assigned classes as recently as the 2000-2001 school year. (PDO, F.F. 6-10.)

has never objected to these nonmember employees performing classroom teaching duties. (F.F. 6-8; N.T. 14-18.) Because the work was performed by nonmembers during the 1970's, 1980's, 1990's and as recently as the 2000-2001 school year, the fact that the nonmember at issue in the Charge happens to be a principal, rather than a supervisor or department chairperson, is irrelevant.

Further, Section 701 of PERA requires the District to bargain with the Association over wages, hours and other terms and conditions of employment. The failure to do so is a violation of Section 1201(a)(5). The Association has not met its burden of proving that the District unilaterally altered the bargaining unit members' wages, hours or other terms and conditions of employment by assigning classroom teaching duties to a principal rather than another nonmember to whom the Association does not object. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 323 A.2d 1069 (1977).

In Conneaut Sch. Service Personnel Ass'n, PSEA v. Conneaut Sch. Dist., 16 PPER ¶ 16005 (Proposed Decision and Order, 1984) the work at issue had been historically subcontracted and the Hearing Examiner concluded that there was no need to negotiate the individual subcontracting assignments or the replacement of one subcontractor for another because it did not vary significantly from past practice and there was no demonstrable adverse impact on employees in the unit. Similarly, there is no duty to negotiate over the assignment of classroom teaching duties to a nonmember principal rather than a nonmember supervisor or department chairperson where the work has historically been shared by nonmembers and there is no demonstrable impact on employees' wages, hours or terms and conditions of employment. To succeed on its Charge, the Association would have had to have timely objected to the transfer of bargaining unit work outside of the unit, not to merely an individual assignment during the thirty-plus years that the work has been performed by nonmembers.

In its final exception, the Association argues that the Hearing Examiner misapplied the law as stated in Wyoming Valley West and Central Greene, supra. The Board finds no error of law. To the contrary, in Wyoming Valley West, the Board found an unlawful transfer of bargaining unit work where the employer unilaterally changed the pattern of assigning work by (1) assigning it exclusively to nonmembers; (2) outside of the members' normal working hours; (3) when overtime would have been available, rather than to members and nonmembers simultaneously, during normal working hours, as had been the past practice. The Board found an unfair practice in that case because the employer varied the extent to which members and nonmembers performed the same work and impacted the members' opportunity for overtime. In this case, the Association has not proven that the District varied the extent to which members and nonmembers perform classroom teaching duties (only that it objects to the assignment of those duties to a particular nonmember) or that the assignment of those duties to a principal impacted the members' wages, hours or terms and conditions of employment. Similarly, in Central Greene, the hearing examiner concluded that the employer committed an unfair practice by varying the degree to which nonmembers performed bargaining unit work when it eliminated a bargaining unit position. There is no such proven variance by the District, as it only varied to which nonmember it

assigned the work. The Hearing Examiner's decision is fully consistent with these cases and thus, the Board dismisses this final exception.

The Board cautions the parties that its review of this case covers solely the statutory issue of whether the assignment of classroom teaching duties to a nonmember of the bargaining unit constitutes an unfair practice under PERA, given the parties' history. The Board's decision does not entertain the issue of whether this assignment violated the parties' collective bargaining agreement. Such a contractual issue is appropriately reserved exclusively to the parties' grievance arbitration procedure. Section 903 of PERA; West Shore Sch. Dist v. West Shore Educ. Ass'n, 20 PPER ¶ 20113 (Final Order, 1989)(Board resists interpreting collective bargaining agreements and confines its role to interpretation of PERA, thereby properly addressing statutory and not contractual rights); PLRB v. Neshaminy Fed'n of Teachers, 13 PPER ¶ 13249 (Final Order, 1982)(compliance with the collective bargaining agreement raises issue of its meaning and therefore reserved to the expertise of an arbitrator and not that of the Board in resolving unfair practices).

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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 be and the same are dismissed and the Proposed Decision and Order be and the same is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle, Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this nineteenth day of June, 2001. 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.