

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GIRARD FEDERATION OF TEACHERS, :
LOCAL 2099, PAFT, AFT, AFL-CIO :
 :
v. : Case No. PERA-C-01-444-W
 :
GIRARD SCHOOL DISTRICT :

FINAL ORDER

On October 10, 2001, Girard Federation of Teachers, Local 2099, PAFT, AFT, AFL-CIO (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Girard School District (District) alleging that the District violated Section 1201(a)(1), (2), (3) and (5) of the Public Employee Relations Act (PERA) by entering into a service purchase contract agreement (SPCA) with an outside contractor for speech therapy services. Following continuance of the hearing to facilitate settlement discussions, a hearing was held on April 2, 2002. On September 24, 2002, the Hearing Examiner issued a Proposed Decision and Order (PDO) in which he concluded that the charge was not timely filed. On October 15, 2002, the Union filed timely exceptions to the PDO with the Board. On October 30, 2002, the District filed a brief in opposition to the Union's exceptions.

After a thorough review of the Union's exceptions, the District's responses thereto and all matters of record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

5. The District subcontracted with the Northwest Tri-County Intermediate Unit (IU) for speech therapy services prior to the 1998-1999 school year. During this time, Bonnie Stelter, who is a speech pathologist, performed speech therapy services at the District while employed by the IU pursuant to the agreement. In the 1998-1999 school year, the District transferred the speech therapy services performed by the IU to the District and Ms. Stelter became an employe for the District. Ms. Stelter is currently a member of the bargaining unit. (N.T. 7, 16, 24-26).

6. In February, 2000, the District entered into an SPCA with Jean Cordier, also a speech pathologist, to provide speech therapy services for fifteen hours a week. The District has continuously contracted with her for speech therapy services since that time. Ms. Cordier is not a member of the bargaining unit of professional employes represented by the Union. (N.T. 8, 25-30; Respondent's Exhibit 1).

15. The District did not, at any time, discontinue contracting with the IU for physical therapy, occupational therapy and curriculum services for vocational students. (N.T. 32).

16. Ms. Cordier is not on the District's payroll. She sends invoices to the District to charge the District for the time that she works. The District does not withhold any payroll taxes from its payments to Ms. Cordier. Ms. Cordier does not receive any sick leave or personal leave. No contributions are made to the Public School Employees' Retirement System for Ms. Cordier. She neither receives the benefits nor is entitled to the rights given to the teachers in the bargaining unit. (N.T. 9, 19, 20).

DISCUSSION

The District provides speech therapy services to its students. Since the 1998-1999 school year the District employed Bonnie Stelter, a member of the bargaining unit and full-time professional employe, as a speech pathologist. In February 2000, the District entered into an SPCA with Jean Cordier to provide speech pathology services for fifteen hours a week. Ms. Cordier is not a member of the bargaining unit of professional employes represented by the Union. The contract governing Ms. Cordier's services is approved as a resolution of the board of directors of the District. In providing the services, Ms. Cordier follows a child's individual educational plan (IEP). She works along with the other team members providing services; she meets with parents of the students as well as the supervisor of special education. At an August, 2000, school board meeting, the District again approved a contract with Ms. Cordier for speech pathology services for 15 hours per week. One year later, on August 27, 2001, the District again entered an SPCA with Ms. Cordier for speech pathology services. Pursuant to the collective bargaining agreement, the District sends the Union copies of the Board agendas and minutes. The minutes show the passage of resolutions relating to employment contracts, such as those with Ms. Cordier. The Union president or a Union representative attends almost every District board of directors meeting.

In its exceptions and supporting brief, the Union argues that the terms of Ms. Cordier's employment contract were separately negotiated each year with the District Superintendent and she had no expectation of continued employment beyond the term of each separate contract. Accordingly, argues the Union, the school board resolution on August 27, 2001 authorizing the Superintendent to enter into another separate contract with Ms. Cordier gave rise to a new cause of action and the October 10, 2001 unfair practice charge is within four months of the August 27, 2001 District board resolution and is timely within Section 1505 of PERA.¹

The cause of action charged in this case involves subcontracting and removal of bargaining unit work. Ms. Cordier was not hired by the District as an "employe." She is not a member of the bargaining unit and receives none of the benefits given to members of the bargaining

¹Section 1505 of PERA provides, in relevant part, the following:

No petition or charges shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge.

unit. She does not receive any personal or sick leave nor are contributions made to the Public School Employees' Retirement System on her behalf. Ms. Cordier separately invoices the District for the amount of services that she provides. When the District pays those invoices, it does not deduct any payroll taxes or contributions to benefits from those payments. Accordingly, Ms. Cordier is an independent contractor with whom the District contracted speech therapy services. Therefore, the Board will address the issues presented in the context of subcontracting rather than a cause of action for alleged direct dealing with an individual member of the collective bargaining unit.

The events of August 2001 did not give rise to a new cause of action because the August 2001 SPCA did not effectuate a change in the status quo of working conditions that was created by the original February 2000 SPCA between the District and Ms. Cordier. New Britain Township Police Benevolent Ass'n v. New Britain Township, 33 PPER ¶ 33069 (Final Order, 2002). If contracting for speech therapy services constituted an unlawful removal of bargaining unit work, the resulting changes experienced by the bargaining unit initially occurred no later than February 2000. In PLRB v. Borough of Frackville, 14 PPER ¶ 14139 (Final Order, 1983), the Board stated that "the employer's repeated repudiations of the contract do not constitute an independent unfair practice as these repudiations are 'inescapably grounded' in the initial, time-barred repudiation." Id. at 297. Similarly, the repeated subcontracting of speech therapy work is "inescapably grounded" in the initial, time-barred SPCA with Ms. Cordier. Accordingly, the Examiner properly determined that the alleged unilateral change in terms and conditions of employment through the subcontracting of speech therapy services occurred in February 2000 and that any subsequent contracts with Ms. Cordier did not effectuate any further changes in terms and conditions of employment experienced by the bargaining unit, regardless of whether subsequent SPCAs were renewals or separate contracts. The dispositive fact is that the work was not restored to the bargaining unit and performed by the bargaining unit members following expiration of the August 2000 subcontract and renewal of the subcontract in August 2001. We accordingly affirm the Hearing Examiner's conclusion that the charge was not timely filed.

Also, the District's SPCA of August 2001 with Ms. Cordier did not constitute an unlawful removal of bargaining unit work even had the charge been timely filed in October 2001. An employer commits an unfair practice if it unilaterally transfers work that is exclusively performed by the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); AFSCME Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992). The Board has repeatedly emphasized, however, that the transfer of bargaining unit work violation will only be found if it is also proven that the work had been exclusively performed by the bargaining unit. AFSCME, Council 13, supra (affirming the Board's consistent holdings requiring unions to demonstrate that the work in question has been performed exclusively by the bargaining unit); PSSU Local 668 SEIU v. Commonwealth of Pennsylvania, Department of Public Welfare, 27 PPER 27188 (Final order, 1996) (holding that, where the work at issue has been traditionally performed by both outside workers and bargaining unit workers, no bargaining obligation arises unless additional work is assigned to the outside workers); AFSCME, Council 13 v. Commonwealth of Pennsylvania, Department of Agriculture, 22 PPER ¶

22186 (Final Order 1991) (opining that it is proper to assess the prior history regarding the work assignment at issue to determine whether the work has been exclusively performed by the bargaining unit); AFSCME, Council 13 v. Commonwealth, Department of Transportation, 22 PPER ¶ 22091 (Final Order, 1991)(holding that where there is a pattern or past practice of subcontracting the work at issue, the employer does not have a duty to bargain the subcontracting of that work which historically was not exclusively performed by the bargaining unit); York Paid Firefighters Ass'n, Local 627, IAFF v. City of York, 19 PPER ¶ 19037 (Final Order, 1988) (holding that, where the paid firefighters shared duties and equipment with the volunteer firefighters, the assignment of the operation of a new vehicle to the volunteers did not constitute the removal of work giving rise to a bargaining violation).

The uncontradicted evidence of record in this case demonstrates that the District historically subcontracted speech therapy work on a regular basis in addition to its agreement with Ms. Cordier. The District subcontracted with the IU for special education services prior to the 1998-1999 school year. Ms. Stelter, who is the speech therapist in the bargaining unit, formerly performed speech therapy services at the District when she was working for the IU. In the 1998-1999 school year, the District transferred the speech therapy services performed by the IU to the District, and Ms. Stelter became an employe for the District. In February 2000, the second semester of the next school year, the District, in response to an increase in enrollment, again subcontracted for speech therapy services and has contracted with Ms. Cordier for those services since that time. Also, the District did not, at any time, discontinue its contractual relationship with the IU for physical therapy, occupational therapy and curriculum services for vocational students. Accordingly, an examination of the history of the Speech Therapy services, and special education services, as a whole, reveals that all of these services have not been performed by the bargaining unit exclusively, as required, and the District did not have a duty to bargain its contract with Ms. Cordier. Thus even had the charge of unfair practices been timely filed, no unfair practice could have occurred because the work had not been exclusively performed by the bargaining unit.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner, as amended herein.

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 to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order, as amended herein, is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman,

L. Dennis Martire, Member, and Anne E. Covey, Member, this nineteenth day of November, 2002. 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.