

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COMMUNITY COLLEGE OF BEAVER COUNTY :
SOCIETY OF FACULTY, PSEA/NEA :
:
v. : Case No. PERA-C-02-73-W
:
BEAVER COUNTY COMMUNITY COLLEGE :

FINAL ORDER

The Community College of Beaver County Society of Faculty, PSEA/NEA (Union) filed timely exceptions and a Brief in Support of Exceptions on January 31, 2004, with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order (PDO) issued January 12, 2004. In the PDO, the Hearing Examiner dismissed the charge of unfair practices the Union filed against the Beaver County Community College (College) alleging that the College violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA), by diverting bargaining unit work. The College filed a Brief in Opposition to Exceptions on February 19, 2004. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

24. That since the fall of 2001, no faculty member has transcribed the grades. In the fall of 2001, Director of Aviation Richard Piper transcribed the grades. As Piper's successor, Mark Cox transcribed the grades in subsequent years. (N.T. 37, 90, 94, 102-104)

28. That in the spring of 2001, Matuszak took a leave of absence. During this time, Bob Campbell, a member of the bargaining unit, assumed her responsibilities as coordinator, including transcribing the grades and completing change of grade cards for students. (N.T. 25, 81-82, 83).

DISCUSSION

The Hearing Examiner's salient findings of fact are as follows. The College is a public employer within the meaning of Section 301(1) of PERA. The Union is an employe organization within the meaning of Section 301(3) of PERA, and is the exclusive representative of the professional faculty at the College. The College and the Union are parties to a collective bargaining agreement for a term from September, 1998 to August 31, 2002, that was extended by mutual agreement of the parties.

The College established a Professional Pilot/Aerospace Management/Avionics department. The courses in the department are divided into two groups: flight courses and ground instruction. The College offers twenty-six (26) credits of its curriculum as flight courses, which are "by appointment." Beaver Aviation, Inc., a private entity under contract with the College to provide Federal Aviation Authority (FAA) approved pilot and flight instruction, conducts the actual instruction of the "by appointment" flight courses.

Ursula Matuszak is a full time faculty member at the College, beginning her career there in January 1986. In August 1994, she became the coordinator of the Professional Pilot/Aerospace Management/Avionics department. As the coordinator, Matuszak is responsible for ensuring the students' flight courses and evaluations meet FAA standards, monitoring the students' progress in the flight courses and dealing with any student complaints, occasionally riding along with the students for observation purposes, overseeing the majority of the students' progress in each lesson plan and transcribing grades and completing change of grade cards for students.

In the fall of 2001, the College stopped assigning faculty from the bargaining unit to the flight classes. The College catalogue also ceased listing faculty members for the flight classes. As a result, faculty members could no longer opt to serve as an instructor in the flight classes. This decision caused Matuszak to lose nine (9) teaching credits. On June 7, 2001, Matuszak filed a grievance over the new schedule. The College resolved the grievance by developing a compromise work assignment for her that was consistent with the provisions of the collective bargaining agreement.

At the end of the fall 2001 semester, the college's Director of Aviation, Richard Piper, directed Matuszak to transcribe the grades of the students in the flight courses. She refused this request on the grounds that she never monitored the students' progress during the semester, and no discipline was levied against her for this refusal. Since then, no faculty member has transcribed the grades. Matuszak remained the Aviation Coordinator at the date of the hearing.

In its exceptions, the Union asserts that several of the Hearing Examiner's factual findings are not supported by substantial evidence. The Union further asserts that the Hearing Examiner erred in his holdings that the College did not unlawfully divert bargaining unit work and that the Union's charge was not timely filed.

The Union contends that Findings of Fact Numbers 12, 13, 16, 17, 21, 24 and 26 are incorrect or unsupported by the record. Findings of fact must be supported by substantial, legally competent evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942); State System of Higher Education v. PLRB, 737 A.2d 313, 315, n.6 (Pa. Cmwlth. 1999); Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000); Manuel Zavala-Lopez v. Kaolin Mushroom Farms, Inc., 29 PPER ¶ 29025 (Final Order, 1997). Substantial evidence is "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, *supra* (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938)).

A review of the record reveals that Finding of Fact Number 24 is in error as written. The record reveals that Richard Piper, not Mark Cox, transcribed the grades in the fall of 2001. Mark Cox transcribed the grades in subsequent semesters. Accordingly, Finding of Fact 24 is herein amended to reflect this change.

The remaining findings will remain undisturbed, as the Hearing Examiner's citations to the record provide sufficient support for them.

Consequently, the remaining exceptions challenging the Findings of Fact are dismissed. Furthermore, the exceptions are dismissed to the extent the Union asserts that the Findings of Fact are incomplete and that the Hearing Examiner ignored or omitted evidence favorable to the Union. The Hearing Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize findings that would support a different decision, even if there were substantial evidence supporting such findings. Page Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); In the Matter of the Employes of Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Department of Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986). After reviewing the record and the PDO, the Board concludes that the Hearing Examiner discerned those findings necessary to support his conclusions and that he did not omit necessary findings.

The Union next asserts that the Hearing Examiner erred in his conclusion that the Union failed to timely file its charge. A complainant has the obligation to file charges within four months of the date when it becomes aware of the actions constituting the alleged unfair practice. 43 Pa. C.S. 1101.1505 (2003); Susquehanna Regional Police Association v. Susquehanna Regional Police Department, 31 PPER ¶ 31064 (Final Order, 2000). A complainant becomes aware of the cause of action when it knew or should have known of the alleged unfair practice. North Pocono Educational Support Personnel Association, PSEA/NEA v. North Pocono School District, 32 PPER ¶ 32117 (Final Order, 2001).

To discern whether or not the Union timely filed its charge, it is necessary to analyze the Union's allegations based on their distinct components. On its face, the charge appears to allege that the College diverted work performed by one individual. However, that individual holds two discrete positions within the organization: full-time faculty member and coordinator of the Professional Pilot/Aerospace Management/Avionics department. The Union alleges that the College diverted the unit member responsibilities of both the faculty and coordinator positions to a supervisor outside the bargaining unit.

To the extent that the grading and monitoring of the flight course students was faculty related, the Union should have known of the changed conditions by the commencement of the fall 2001 semester. The fall 2001 course catalogue, available prior to the start of the semester, indicated that the "by appointment" classes previously listed with Matuszaks' name, were listed without her name or the name of any other faculty member. This was further emphasized by the fact that faculty members, such as Matuszak, could no longer choose to instruct a flight class. Therefore, the Union knew or should have known by the beginning of the semester, the first week of September, that faculty would no longer be assigned to the flight classes. Consequently, to be timely, any unfair practice charge concerning this incident must have been filed by the first week of January 2002. As the Union filed its charge on February 13, 2002, this charge must be dismissed as untimely. Therefore, the Union's exceptions concerning the diversion of the faculty member's work are dismissed.¹

¹ Because this charge is untimely, the Board has not reviewed the merits of this charge. Therefore, the Board makes no determination as to

To the extent that the transcribing of the flight students' grades was the coordinator's responsibility, the Union should have known of the changed conditions in December 2001, at the end of the fall 2001 semester. At that time, Matuszak's supervisor requested that she transcribe the grades for students in the flight courses, an assignment normally delegated to the coordinator. Prior to this request, the College never provided any indication that a non-unit member would transcribe the grades. Consequently, the Union should not have known, prior to Matuszak's refusal and Piper's completion of the work, that a non-unit member was performing work designated to the bargaining unit. Therefore, the Union's exception asserting that the charge filed alleging an improper diversion of the coordinator's bargaining unit work was timely is sustained.

Finally, the Union contends that the Hearing Examiner erred in his conclusion that the College did not unlawfully divert bargaining unit work. When Matuszak declined to perform the work as directed by the employer, its response was not to use its managerial authority and means available to it to require its instructions to be carried out, but rather instructed a non-bargaining unit person to perform the work. The Union alleges that Matuszak's refusal to transcribe the grades is not a legitimate defense to the College's diversion of bargaining unit work over a prolonged period of time.

Section 702 of PERA provides that the employer possesses the managerial right to direct its workforce. When the College directed Matuszak, in her role as coordinator, to transcribe the grades, the College exercised its rights under Section 702 of PERA. In response to Matuszak's refusal to perform the work, the College could have exercised its managerial prerogative in one of two respects. First, the College had the means available to it as an employer to compel, under Section 702, Matuszak to perform the assigned task. Second, even if it was willing to countenance Matuszak's apparent insubordination, it could have directed another member of the bargaining unit to perform the work, as it had in the spring of 2001, when Matuszak took a leave of absence, and thus avoid an unlawful diversion of bargaining unit work for a prolonged period of time. See Additional Finding of Fact 28, *supra*.

However, on these facts, the College may not assert Matuszak's refusal as a legitimate defense to unilaterally diverting work exclusively performed by the bargaining unit. The law is well established that a public employer must bargain with an employee representative over diverting or transferring work exclusively performed by the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); Morrisville School District v. PLRB, 687 A.2d 5 (Pa. Cmwlth. 1996). Consistent with that principle, it is an unfair practice to transfer work historically and exclusively performed by the bargaining unit to a managerial employee outside the unit. See FOP, Williamsport Lodge No. 29 v. City of Williamsport, 29 PPER ¶ 29109 (Final Order, 1998) (The Board upheld the Hearing Examiner's finding of an unfair practice under an analogous provision of Act 111 of 1968 where bargaining unit work was transferred to managerial employees.)

whether this incident is an unlawful practice or a lawful exercise of management prerogative in the direction of personnel.

Here, the Hearing Examiner found that the transcribing of grades was work historically and exclusively performed by the Union. The Hearing Examiner further found that a department director, an employe outside the bargaining unit, transcribed the grades following Matuszak's refusal and without bargaining with the Union over this action. Therefore, the College violated PERA by unilaterally diverting bargaining unit work. Consequently, the Union's exceptions with regard to this issue are sustained.

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions in part and set aside the Proposed Order of Dismissal, consistent with the above discussion.

DECISION AND ORDER

CONCLUSIONS

Conclusion numbers 1 through 3 as set forth in the Proposed Decision and Order are hereby affirmed and incorporated herein by reference and made a part hereof. Conclusion number 4 of the Proposed Decision and Order is hereby vacated and set aside.

5. That the College has committed unfair practices in violation of Section 1201(a)(1) and (5) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Exceptions filed to the above case number be and the same are hereby affirmed in part and dismissed in part, and the Order on pages 5 and 6 of the Proposed Decision and Order is hereby vacated and set aside; and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the College shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed by Article IV of PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit.

3. Take the following affirmative actions that the Board finds necessary to effectuate the policies of PERA:

(a) Post a copy of this Final 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

(b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Final Order by completion and filing of the attached affidavit of compliance.

(c) Serve to the Union within twenty (20) days of the date hereof satisfactory evidence of compliance with this Final Order by completion and service of a copy of the attached affidavit of compliance.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this sixteenth day of March, 2004. 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.

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AFFIDAVIT OF COMPLIANCE

The College hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Act, that it has posted a copy of the Final Order as directed and that it has served a copy of this affidavit on Community College of Beaver County Society of Faculty, PSEA/NEA.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public