

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COLONIAL INTERMEDIATE UNIT 20 :
EDUCATION ASSOCIATION :
: Case No. PERA-C-04-146-E
v. :
: :
COLONIAL INTERMEDIATE UNIT 20 :

FINAL ORDER

On July 16, 2005, the Colonial Intermediate Unit 20 Education Association (Union) timely filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board), to a Proposed Decision and Order (PDO) issued July 7, 2005. In the PDO, the Hearing Examiner concluded that the Colonial Intermediate Unit 20 (IU) did not violate Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by eliminating summer training programs for teachers at the IU and member school districts. On August 4, 2005, the IU filed a response to the Union's exceptions.

The IU employs three Comprehensive System for Personnel Development staff (CSPD).¹ They provide training through workshops for both member school district teachers and the IU's teachers. These workshops are conducted both during the school year and during the summer months. CSPD staff members are ten-month employes who work under supplemental contracts when teaching workshops during the summer. The IU has offered summer workshops using the CSPD staff for the last ten summers.

In the summer of 2004, the IU no longer offered summer workshops due to insufficient funding to pay its CSPD staff for summer hours. In the preceding years the IU had compensated the CSPD staff by paying them a per diem rate based on their ten-month salaries. However, as less money became available, the IU offered mixed compensation by combining both compensatory time and per diem pay for CSPD staff who worked during the summer. After further fiscal constraints, the IU compensated CSPD staff members, who conducted workshops in the summer of 2003, solely with compensatory time off during the following school year. Consequently, the CSPD staff was less available during the regular school year for training workshops.

In addition to the IU, there were a number of independent providers offering identical training to the IU's teachers and its member districts. These independent providers included local universities, the Pennsylvania Department of Education, and the Pennsylvania Training and Technical Assistance Network, known by the acronym, PaTTAN. PaTTAN is the technical assistance arm of the Bureau of Special Education, Department of Education. PaTTAN's role is to train both CSPD staff in IU's and teachers in the districts directly. Member districts often directly contact these independent third-party providers to conduct summer workshops identical to those offered by the IU.

In several of its exceptions, the Union claims that the Examiner erred in failing to find certain facts. The Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988). After reviewing the record and the PDO, the Board concludes that the Examiner indeed made those findings that were necessary to support his conclusions, that he did not omit any necessary findings and that none of the Union's proposed alternative findings are necessary to support the Examiner's conclusions.²

The Union also contends that the Examiner erred in failing to address an alleged issue of unilateral subcontracting and failed to make findings of fact in this regard.

¹ Formerly, there were four CSPD employes until one recently retired.

² The Board notes that, contrary to Paragraph 4 of the Union's exceptions, the Examiner expressly found as fact that bargaining unit employes provided summer training for the last ten summers. (F.F. 3).

Contrary to the Union's claims, the Examiner indeed addressed, analyzed and resolved this issue. On page two of the PDO, the Examiner quoted from the Union's charge alleging that the IU unlawfully subcontracted the summer training work performed by the bargaining unit. After analyzing the facts and the law, the Examiner expressly concluded that the IU did not subcontract bargaining unit work. (PDO at 3-4). The Examiner stated the following:

Whether the IU's actions are couched as a reduction of services or as going out of the business of summer offerings, there is no violation of the Act. Simply put, the IU no longer offers summer workshops. Those third party providers who do offer summer workshops are not under the control of the IU in any sense of the word. The IU merely refers inquiring member districts to these third parties for summer services. Whether those third parties offer any summer training, when and where that training might be offered, the subjects offered, and who performs that training are all decisions over which the IU has no control. This charge of subcontracting is, therefore, dismissed in its entirety

(PDO at 3-4). Moreover, an employer has no duty to bargain with its employee representative over its managerial decision to cease providing certain services. Bucks County Rangers Benevolent Ass'n v. Bucks County, 26 PPER ¶ 26007 (Final Order, 1994). Accordingly, the Examiner properly omitted any findings relating to the IU's failure to negotiate the termination of summer services because such findings are not necessary or relevant to support his conclusion that bargaining was not required.

Also, the Board affirms the Examiner's analysis and conclusions regarding the question of subcontracting, to the extent that the Union's exceptions claim that the Examiner erred in that regard. The Examiner aptly stated the following:

[T]he work in question is the service of summer workshops previously offered by the IU. The IU no longer offers that service. When an employer itself no longer offers the service in question, and that employer has no control over the entity now performing the service in question, there is no subcontracting.

(PDO at 3) (citations omitted). Accordingly, having found that the IU no longer offers summer training and that third party providers are not in any way controlled by the IU, the Examiner properly concluded that the IU did not subcontract those services. Under Section 702 of PERA, a public employer possesses a managerial prerogative to make decisions regarding the quality and level of its services by exercising discretion over the functions and programs of the public employer. City of Philadelphia (First Responder) v. PLRB, 588 A.2d 67, 72 (Pa. Cmwlth. 1991), petition for allowance of appeal denied, 528 Pa. 632, 598 A.2d 285 (1991). Therefore, having not subcontracted, the IU possesses a managerial prerogative to eliminate the summer training workshops in this case.

After a thorough review of the exceptions, response thereto and all matters of record, the Board dismisses the exceptions and sustains the Proposed Decision and Order of the Examiner.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee 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 is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this sixteenth day of August, 2005. 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.