

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PALISADES EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-05-421-E
 :
 PALISADES SCHOOL DISTRICT :

FINAL ORDER

On September 25, 2006, the Palisades Education Association (Union) timely filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) dated September 12, 2006. On October 2, 2006, the Union timely filed amended exceptions and a supporting brief.¹ In the PDO, the Hearing Examiner dismissed the charge and concluded that the Palisades School District (District) did not engage in unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) when it made available a college level course at the District's senior high school (High School) taught by an adjunct faculty member of the Bucks County Community College (BCCC), rather than a bargaining unit member.

After a thorough review of the exceptions and the record, the Board makes the following:

AMENDED FINDING OF FACT

4. James Beerer is an adjunct faculty member of the BCCC under contract with the BCCC to teach dual credit, concurrent enrollment college level courses ("Foundations of Education" and "Sociology") at the High School during the regular school day. Mr. Beerer taught these college courses during the 2000-2001 school year and the 2005-2006 school year. The District also provided concurrent enrollment courses during the 2003-2004 school year. (N.T. 16, 17, 40, 41, 49).

DISCUSSION

During the 2000-2001 school year, the District offered college level courses at the High School for which participating students received credit at both the High School and the host college. These courses are referred to as dual-credit courses or concurrent enrollment courses. James Beerer is an adjunct faculty member of the BCCC, which provides concurrent enrollment courses at the High School. As an adjunct faculty member of the BCCC, Mr. Beerer taught two dual-credit courses ("Foundations of Education" and "Sociology"), at the High School, during the 2000-2001 school year and the 2005-2006 school year. The District also provided concurrent enrollment courses during the 2003-2004 school year. In January of 2006, Mr. Beerer taught two sections of a concurrent enrollment course in sociology. He issued one grade to each student recorded by both the District and the BCCC. His course syllabus was prepared under the supervision, control and approval of the BCCC. Students received one high school credit and three college credits for each course provided by the BCCC taken at the High School.

In its exceptions, the Union contends that the Examiner erred in finding that the work being performed by Mr. Beerer in teaching the dual-credit, concurrent enrollment courses is not bargaining unit work. As an initial matter, the Union does not challenge the District's managerial prerogative to determine the manner and level of educational services by making available concurrent enrollment, dual credit courses for its students. Wilkes-Barre Police Benevolent Ass'n v. City of Wilkes-Barre, 29 PPER ¶ 29240 (Final Order,

¹ The Union's amended exceptions included the original exceptions. Accordingly, the Board will make reference to the amended exceptions (exceptions) only in this Final Order.

1998)(opining that a matter is not bargainable where it bears directly on a public employer's managerial prerogative regarding the level of services it chooses to provide to the people it serves)(citing City of Philadelphia v. PLRB, 588 A.2d 67 (Pa. Cmwlth. 1991)). The Union, however, claims that, as with any other new course made available by the District under its managerial prerogative, the teaching of concurrent enrollment courses to the High School students is bargaining unit work, which cannot be removed unilaterally.

However, contrary to the Union's position here, the implementation of concurrent enrollment programs at high schools throughout the Commonwealth and the provision of grant monies to fund those programs is governed by a statutory amendment to the School Code of 1949, known as "Act 46." Act 46 formulates and identifies the concurrent courses as college courses, the unique nature of which is unlike other new or old high school courses traditionally introduced and provided by the District. Act 46 defines a concurrent course as a "postsecondary course", i.e., a college course. 24 P.S. §§ 16-1602-B. The Act further requires that the concurrent courses are actually developed, provided and presented by an eligible college, not a high school. 24 P.S. §§ 16-1605-B. The Act also requires that a high school, which has decided to make available concurrent enrollment courses to its students, must form a committee and enter into an agreement with an eligible college to provide the courses. 24 P.S. § 16-1612-B & 16-1612-B. Under the Act, the instructor teaching a concurrent enrollment course must be either a faculty member or an adjunct faculty member of the college providing the course. 24 P.S. § 1604-B. In circumstances where the concurrent enrollment course is taught at a location other than the host college, e.g. a high school, the teacher, in addition to being a faculty member of the host college, may also be an employe of the school where the concurrent course is being taught. Id. Therefore, once the District exercises its managerial prerogative to make available a concurrent enrollment, dual credit course, the manner in which that course is implemented or provided, including the selection of the teacher, is beyond the control of the District. The host college may select a member of the bargaining unit to be an adjunct faculty member for purposes of teaching the dual credit course at a high school, but the host college is under no obligation to do so and certainly has no bargaining obligation with the Union. The assignment of the dual-credit course instruction work is beyond the control of the District, which is not authorized under Act 46 to select the teacher or approve the syllabus for a college level course that is provided by the host college. 24 P.S. §§ 16-1602-B, 16-1604-B & 16-1605B. Moreover, the Union has offered no evidence that the District's action reduced the size of the bargaining unit or impaired any provision of the parties' contract.

The Union also argues that the Examiner misapplied City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). The Union claims that the City of Allentown Court held that work was not police bargaining unit work because it was not law enforcement related. The Union then attempts to distinguish City of Allentown by arguing that teaching at the High School for High School credit is bargaining unit work because "[t]hat in and of itself is the purest form of bargaining unit work." (Exceptions and brief at 2). However, the Union has mischaracterized the holding in City of Allentown and confused the relevant inquiry by the Board in an unfair practice claim alleging unlawful removal of bargaining unit work and a unit clarification proceeding seeking to place a position in or out of a unit. Contrary to the Union's argument, the City of Allentown case held that bargaining unit work is that which is performed by the bargaining unit and that, without a unit clarification determination from the Board, the work may not be removed unilaterally merely because the public employer subjectively deems the work more appropriately performed by non-bargaining unit employes. In City of Allentown, the Commonwealth Court affirmed the Board's position that it does not evaluate the nature of the work in a removal case. Rather, "[I]n an unfair practice claim against a public employer for unilaterally removing bargaining unit work, the union has the burden of establishing that the work in question was exclusively performed by a member or members of the bargaining unit." FOP, Queen City Lodge No. 10 v. City of Allentown, 34 PPER 90 (Final Order, 2003) (citing City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1987); AFSCME Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth 1992)). The Union may also meet its burden by establishing that the bargaining unit exclusively performed an identifiable proportion of the work in question. City of Allentown, 34 PPER 90.

In this case, as noted by the Examiner, instructing dual credit, concurrent enrollment courses has been performed at the High School by non-bargaining unit faculty of the BCCC numerous times. At no time since the offering of college credit courses at the High School began over four years ago were any of the duties of instructing dual-credit college courses performed by members of the bargaining unit. As properly recognized by the Examiner, the charge was limited to allegations that the District violated PERA for allegedly removing bargaining unit work and not for violations of any agreements between the parties. The Board, therefore, concludes that the Examiner properly dismissed the charge because the Union did not prove that an identifiable proportion of the work was exclusively performed by the bargaining unit, rather than for violating the parties' contract or other alleged agreements. Moreover, Act 46 removes the District from controlling the selection of the instructor. The District is simply without authority to give the work to 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.

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 by the District 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, and Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of November, 2006. 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.