

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ASSOCIATION OF MIFFLIN COUNTY EDUCATORS :  
AND MIFFLIN COUNTY EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION, PSEA/NEA :  
:  
v. : Case No. PERA-C-06-51-E  
:  
MIFFLIN COUNTY SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On February 3, 2006, the Complainants Association of Mifflin County Educators, PSEA/NEA (Professional Association) and Mifflin County Educational Support Personnel Association, PSEA/NEA (Nonprofessional Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Mifflin County School District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). On April 12, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on June 7, 2006. At the request of the Complainants, the hearing was continued to July 18, 2006. On that date, all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The District and the Complainants forwarded post-hearing briefs to the Board on September 11, 2006.

The examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer under PERA. (Stipulation 1; N.T. 6-8)
2. The Complainants are employe organizations under PERA. (Stipulation 2; N.T. 6-8)
3. The Professional Association is the exclusive representative of the professional employes of the District. (Stipulation 3; N.T. 6-8)
4. The Nonprofessional Association is the exclusive representative of certain nonprofessional employes of the District. (Stipulation 4; N.T. 6-8)
5. At its meeting on September 22, 2005, the District's school board approved revisions to its workers' compensation procedures, adding a post-accident drug and alcohol testing requirement and establishing procedures for its implementation. (Stipulation 5; N.T. 6-8; Association Exhibit 1)
6. By memo dated October 7, 2005 from Lisa Lyles, director of human resources, to District principals, supervisors and union presidents, the District disseminated the revised workers' compensation information, which included the newly added post-accident drug and alcohol testing requirements and procedures. (Stipulation 6; N.T. 6-8; Association Exhibit 2)
7. As indicated in the October 7, 2005 memo, the school board approved these new drug and alcohol procedures to go into effect on November 1, 2005. (Stipulation 7; N.T. 6-8)
8. Prior to November 1, 2005, employes were not required to submit to post-accident drug and alcohol testing. (Stipulation 8; N.T. 6-8)
9. The revised policy provides that as of November 1, 2005, any employe who sustains a work-related injury which requires medical treatment must report to the

Lewistown Hospital Occupational Health Department for a drug and alcohol test within 24 hours of sustaining the injury. (Stipulation 9; N.T. 6-8; Association Exhibit 2)

10. The revised policy sets forth the post-accident drug and alcohol testing procedures. (Stipulation 10; N.T. 6-8; Association Exhibit 2)

11. The policy also provides that the failure to comply with the policy or positive drug or alcohol test results will result in disciplinary action up to and including termination pursuant to the applicable collective bargaining agreement. (Stipulation 11; N.T. 6-8; Association Exhibit 2)

12. The District did not bargain with the Complainants before approving and implementing the post-accident drug and alcohol testing requirement and procedures. (Stipulation 12; N.T. 6-8)

13. Six members of the professional bargaining unit and five members of the nonprofessional bargaining unit submitted to post-accident drug and alcohol testing as required by the policy by reporting to Lewistown Hospital and providing a urine sample pursuant to the direction of hospital staff. (Stipulation 13; N.T. 6-8; Association Exhibit 3)

#### DISCUSSION

The Complainants allege that the District violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing drug and alcohol testing for members of the professional and nonprofessional bargaining units who sustain work-related injuries requiring medical treatment. The District contends that its new drug and alcohol testing policy is designed to further its interest in protecting students and individuals working in its schools, that this interest outweighs the impact on bargaining unit members' job security, and that the policy is not subject to mandatory bargaining under PERA.

The Board has held that changes in workers' compensation policies and injury on duty policies are mandatory subjects of bargaining. County of Delaware v. PLRB, 735 A.2d 131 (Pa. Cmwlth. 1999); Woodland Hills School District, 22 PPER ¶ 22026 (Final Order, 1991), aff'd, 24 PPER ¶ 24002 (Court of Common Pleas of Allegheny County, 1992); West Norriton Township, 28 PPER ¶ 28107 (Proposed Decision and Order, 1997). Moreover, in a similar case where an employer implemented a new policy that required employees to undergo drug and alcohol testing when they became injured or ill on the job and required medical treatment beyond that available at the worksite, the examiner found that the new policy was a mandatory subject of bargaining. Somerset Area School District, 36 PPER 132 (Proposed Decision and Order, 2005).

In Somerset, the examiner relied on the Board's seminal decision in Cambria County Transit Authority, 21 PPER ¶ 21007 (Final Order, 1989), aff'd, 22 PPER ¶ 22056 (Court of Common Pleas of Cambria County, 1991), which set forth the analysis to be employed to determine whether particular drug and alcohol testing policies must be bargained. In Cambria County, the Board held that an employer may not unilaterally implement random drug and alcohol testing unless "a real drug or alcohol problem is demonstrated among the employer's work force and . . . an immediate and substantial public safety risk is presented. In those instances where the public service involved does not meet the above stated criteria, it cannot be said under the State College balancing test<sup>1</sup> that the impact of such testing is greater on the public employer than on the employees due to the intrusiveness of such testing on employees' privacy rights." Cambria County, 21 PPER at 26 (footnote added). Subsequently in City of Pittsburgh, 22 PPER ¶ 22080 (Final Order, 1991), the Board indicated that the Cambria County analysis will be applied when an employer implements other forms of non-cause-based drug testing, and not simply random testing.

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<sup>1</sup> See PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975), where the Supreme Court set forth the balancing test to be applied by the Board in deciding whether a matter is a mandatory subject of bargaining.

Applying the Cambria County analysis in Somerset, the examiner found that there was "no record evidence of a real drug or alcohol problem among the members of the professional bargaining unit, or of an immediate and substantial public safety risk if the employees are not subjected to drug and alcohol testing when they become injured or ill on the job." 36 PPER at 382. Relying on Cambria County, the examiner also noted that "even if such proof had been established on the record, the District would still be required to bargain with the Association over such matters as the nature, integrity and reliability of the testing process and any discipline to follow a positive test result before the District would be permitted to implement drug and alcohol testing." Id. The examiner found that "[h]ere the District did not engage in such bargaining before changing its illness/injury policy to include drug and alcohol testing." Id. Thus, the examiner concluded in Somerset that the district violated its duty to bargain and directed it to rescind the drug and alcohol testing policy.

The same result must obtain here because the record in this case also does not contain evidence of a real drug or alcohol problem among the members of the professional and nonprofessional bargaining units, or of an immediate and substantial public safety risk if the bargaining unit members are not subjected to drug and alcohol testing when they become injured on the job. At best, the record indicates that within the last ten years, one individual who was not a member of either bargaining unit was discharged after admitting that he sold drugs off school property, and three employees in unidentified positions that may or may not fall within the bargaining units at issue were discharged for involvement with drugs or alcohol (N.T. 19-23, 28-32).<sup>2</sup> Even if the record indicated that the three employees were members of the professional or nonprofessional bargaining units, which it does not, three instances of employee drug or alcohol involvement over a ten year period would not show a real drug and alcohol problem among the bargaining units. Moreover, there is no evidence that the discharged employees were injured on the job and required medical treatment, which is the only circumstance in which the drug and alcohol testing policy applies. Thus, there has been no showing of a connection between the testing policy and the instances of employee drug or alcohol involvement that allegedly support the District's unilateral adoption of the policy. Because the record does not show a real drug and alcohol problem among the professional and nonprofessional bargaining units, or an immediate and substantial public safety risk if the bargaining unit members are not tested for such substances when they become injured on the job, the State College balancing test tips in the employees' favor and requires bargaining. Cambria County, supra. By unilaterally adopting the testing requirement and procedures for its implementation without prior collective bargaining with the Complainants, the District violated its duty to bargain under Section 1201(a)(1) and (5) of PERA. Accordingly, the District will be directed to rescind its unilateral action insofar as it affects the members of the professional and nonprofessional bargaining units.

#### CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The District is a public employer for purposes of Section 301(1) of PERA.
2. The Complainants are employee organizations for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

#### ORDER

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

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<sup>2</sup> The District also offered testimony concerning two other employees, but stated in response to the Association's hearsay objection that the testimony was not offered to prove the truth of whether the employees actually had drug or alcohol problems (N.T. 37-40). Therefore, this testimony may not be relied upon as support for such a finding.

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in 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, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Rescind the post-accident drug and alcohol testing requirements and procedures for members of the professional and nonprofessional bargaining units;

(b) Post a copy of this decision and order within five (5) days from the 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

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

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED AND MAILED this twentieth day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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PETER LASSI, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

The Mifflin County School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has rescinded the post-accident drug and alcohol testing requirements and procedures for members of the professional and nonprofessional bargaining units; that it has posted a copy of the proposed decision and order as directed therein; and that it has served copies of this affidavit on the Complainants at their principal places of business.

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Signature/Date

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Title

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

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Signature of Notary Public

October 20, 2006

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PO Box 2225  
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Orris C. Knepp III, Esquire  
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MIFFLIN COUNTY SCHOOL DISTRICT  
Case No. PERA-C-06-51-E

Enclosed please find a copy of the proposed decision and order issued in the above-captioned matter.

Sincerely,

Peter Lassi  
Hearing Examiner

Enclosure

cc: David S. Runk