

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED DECISION AND ORDER

A charge of unfair practices was filed with the Pennsylvania Labor Relations Board (Board) by the Palisades Education Association (Association) on September 20, 2005 alleging that the Palisades School District (District) violated Section 1201(a)(5) of the Public Employee Relations Act (Act) when it offered dual-credit courses taught by other than bargaining unit members.

On October 20, 2005, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for December 19, 2005 in Doylestown, Pennsylvania. After a series of continuance requests, a hearing was held on June 6, 2006, at which both parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

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.

FINDINGS OF FACT

1. The Association is an employe organization.
2. The District is a public employer.
3. During the 2000-2001 school year the District offered limited courses, at the high school, during the school day, for which participating students were able to receive both high school and college credit. These courses are referred to as dual-credit courses. These courses were taught by James Beerer, an employe of Bucks County Community College (BCCC). (N.T. 14, 40, 41, 55).
4. Beerer, as an employe of BCCC, taught two dual-credit courses, Foundations of Education, and Sociology, at the high school, during the school day, on occasion, between the 2000-2001 school year and the 2005-2006 school year. (N.T. 16, 17, 40, 41, 49).
5. In January of 2006, Beerer, as an employe of BCCC, taught, at the high school, during the school day, two sections of a dual-credit course in sociology. Beerer submitted one grade for each student. His course syllabus was prepared under the auspices of BCCC. Students received one high school credit and three college credits for each course taken. (N.T. 28, 35, 36, 37, 41; School District Exhibit 1).

6. Students have attended dual-credit courses at locations other than District schools. (N.T.45, 46).

DISCUSSION

The Association charges the District with violations of Section 1201(a)(5) of the Act because the District, "has given work that is exclusively bargaining unit work to non-bargaining unit persons and therefore has violated the sections as cited above."¹ More specifically, the Association alleges, "in September 2005, the respondent school district commenced a program using grant monies to contract with local colleges/universities to provide courses to the juniors/seniors at the respondent school district." The gravamen of this charge is that the District unilaterally subcontracted the unit's work.

Because the Association has not proved that any bargaining unit members ever performed the work in question this charge is dismissed.

The charging party has the burden of proving its charge by substantial and legally credible evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). An employer violates its bargaining obligation enforceable under Section 1201(a)(5) if it unilaterally transfers bargaining unit work to non-members of the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); Midland Borough School District v. PLRB, 126 Pa. Commonwealth Ct. 551, 560 A.2d 303 (1989).

A principium of a unilateral subcontracting allegation is that the work in question was performed by the bargaining unit; either exclusively, or to the extent that there is a material change in the percentage of unit work performed now by non-bargaining members. Wyoming Valley West School District, 32 PPER ¶ 32008 (Final Order, 2000).

The procès-verbal does not show that bargaining unit members ever taught a dual-credit course, either at the high school, or anywhere else. Regardless of location, the dual-credit courses have always been taught by non-bargaining unit members, employed by the partnering post-secondary institution. Simply put, teaching dual-credit courses cannot be bargaining unit work when bargaining unit members never performed that work. See City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004) (bargaining work is work unit members actually perform).

Much of the parties' briefs are devoted to issues of timeliness, the effect of a recent statutory amendment to the School Code (Act 46 of 2005, 24 P.S. § 16-1601-B et seq.), and whether or not there was a demand for impact bargaining. Nevertheless, all those issues are rendered inconsequential because bargaining unit members have never performed the work in question.

The Association also calls my attention to a prior verbal agreement between the parties made in May of 2001. This agreement was reached after the Association became aware that Beerer was teaching a

¹ Section 1201(a)(5) of the Act.

dual-credit, social studies course, in the high school, during the school day, in the 2000-2001 school year. The agreement reached in May was two-fold. Initially, "that courses would not be offered that could, in fact, be taught by our own personnel, such as a social studies course, as we had certainly competent social studies people who could teach those courses. And secondly, that they [the District] did not see the possibility of jobs being lost as a result of that." (N.T. 15, 16). Nevertheless, the Association has not charged a violation of that 2001 verbal agreement, but rather only charged that the District violated the Act when in September of 2005 it gave "exclusively bargaining unit work to non-bargaining unit persons...." (Specification of Charges, ¶ 6). In fact, it did not, and consequently the charge is dismissed.

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 within the meaning of Section 301(3) of the Act.
2. The Association is a public employe organization within the meaning of Section 301(2) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The District has not committed unfair practices within the meaning of Section 1201(a)(5) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

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 twelfth day of September, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner