

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IROQUOIS EDUCATION ASSOCIATION PSEA/NEA :  
 :  
 v. : Case No. PERA-C-05-608-W  
 :  
 IROQUOIS SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On December 28, 2005, the Iroquois Education Association (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Iroquois School District (District) violated Section 1201(a)(1), (3) and (5) of the Public Employe Relations Act (PERA). On February 27, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on April 27, 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 filed a post-hearing brief on June 5, 2006. The Association filed a brief on June 14, 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 for purposes of Section 301(1) of PERA.
2. The Association is an employe organization for purposes of Section 301(3) of PERA.
3. The District has employed Richard Bonninger for seven years. He currently works as an instructor in the seventh grade English program. His previous position was in-school suspension coordinator (ISS coordinator). (N.T. 7)
4. Bonninger's duties as ISS coordinator included completing all of the paperwork associated with the ISS program, checking students into the ISS room in the morning, making sure that students had work assigned to them by their teachers, making sure that students completed their assignments, and assisting students in completing their assignments. Although Bonninger's degree is in Secondary English, he also helped the students in the ISS room with assignments in other subjects such as math or science. If Bonninger was unable to help the students complete their assignments, he requested assistance from their teachers. (N.T. 7-9, 13)
5. In the 2004-2005 school year, Bonninger's assignment changed. In that school year, Bonninger spent a portion of his workday in the ISS room and also performed some teaching duties outside the ISS room. He still performed all of the recordkeeping and administrative work associated with the ISS program. (N.T. 9-10, 30; District Exhibit 1)
6. While Bonninger was taking his prep period during the 2004-2005 school year, another teacher monitored the ISS room. During other portions of the day when Bonninger was out of the ISS room, an aide monitored the room. (N.T. 10, 31; District Exhibit 1)
7. The District advised the Association before the 2004-2005 school year that it intended to temporarily use an aide in the ISS room due to staffing problems. (N.T. 15, 19-20)
8. As of the 2005-2006 school year, Bonninger no longer performed the paperwork or administrative duties associated with the ISS program. Bonninger was only assigned to the ISS room two days a week to provide lunch coverage for the aide. (N.T. 11-12)

9. During the 2005-2006 school year, a student services aide monitored the ISS room on Monday through Friday from 7:48 a.m. to 10:30 a.m. and from 11:10 a.m. to 1:15 p.m. (N.T. 31-32, 40; District Exhibit 2)

10. The duties of the student services aide in the ISS room include monitoring the students, keeping them on task, making sure they are not sleeping, and keeping them in their seats. (N.T. 34-35)

11. The student services aide in the ISS room contacts teachers to see if they have assignments for the students, but does not assist the students in completing their assignments. If students require assistance in completing their assignments, the aide contacts the students' teachers by telephone or e-mail to request that they assist the students. Students also may request assistance from teachers who come to the ISS room to assist other students. The student services aide does not review or grade the students' work. (N.T. 34-36, 38, 40-43, 46)

12. The District has instructed the student services aide not to engage in any teaching activities. (N.T. 46)

13. During the 2005-2006 school year, a teacher was assigned to the ISS room during the fifth block of each school day. (N.T. 32, 42; District Exhibit 2)

14. Sam Talarico is a science teacher for the District. In the second semester of the 2005-2006 school year, Talarico was assigned to the ISS room during the fifth block of each school day. If students in the ISS room had questions or problems with their assignments, Talarico provided assistance to them. (N.T. 24-28, 32; District Exhibit 2)

15. Special needs students in the ISS room receive educational services from a special education teacher. (N.T. 36)

#### DISCUSSION

In its charge of unfair practices, the Association alleged that the District violated Section 1201(a)(1), (3) and (5) of PERA by engaging in the following conduct:

"The . . . Association represents bargaining unit members who exclusively provide classroom instruction to students at the . . . High School. Prior to the 2005-06 school year, bargaining unit members provided classroom instruction in the In-School Suspension classroom. On or about September 6, 2005, the . . . District assigned an aide to perform classroom instruction in the In-School Suspension classroom located in the . . . High School. This classroom instruction was previously done by bargaining unit members. Thus the District has engaged in a diversion of bargaining unit work."

Thus, the unfair practice alleged in the Association's charge was the use of an aide to perform classroom instruction in the ISS room. However, the Association was not able to prove the allegation in its charge. As indicated in the findings of fact set forth above, the substantial and legally credible evidence of record indicates that the aide is not providing classroom instruction in the ISS room. Rather, any instruction that is provided to students in the ISS room continues to be provided by members of the professional bargaining unit represented by the Association. Therefore, the facts of record require dismissal of the Association's charge.

In its post-hearing brief, the Association alleges that the District committed an unfair practice by eliminating the ISS coordinator position in the 2005-2006 school year and by using a non-unit aide to supervise the ISS program. However, this is a different cause of action than was stated in the Association's unfair practice charge. The charge was clearly limited to alleging a removal of classroom instruction duties from the professional bargaining unit. The Association's brief now alleges that other duties such as monitoring students in the ISS room were removed from the professional bargaining unit.

Section 1505 of PERA provides that "[n]o . . . charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the . . . charge." 43 P.S. § 1101.1505. Although the Board's rules and regulations permit the amendment of unfair practice charges, they do not permit the amendment of a charge to add a new cause of action after the limitations period has run. See 34 Pa. Code § 95.32(a)(charge may be amended if no new cause of action is added after the statute of limitations has run).

Here the four month limitations period for contesting the District's failure to fill the ISS coordinator position and its use of the aide to supervise the ISS program began to run no later than the beginning of the 2005-2006 school year.<sup>1</sup> The Association's post-hearing brief was not filed until June 14, 2006, which was more than nine months after commencement of the 2005-2006 school year. Thus, even if the Association's brief was treated as a motion to amend its charge to allege the removal of additional work from the bargaining unit, the motion would be untimely.<sup>2</sup> Consequently, the Association's charge of unfair practices must be 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 for purposes of Section 301(1) of PERA.
2. The Association is an employe organization for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has not committed unfair practices in violation of Section 1201(a)(1), (3) or (5) of PERA.

#### ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the 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 sixth day of September, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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PETER LASSI, Hearing Examiner

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<sup>1</sup>Contrary to the District's position, the limitations period for challenging the assignment of ISS duties to the aide did not begin to run at the outset of the 2004-2005 school year because the District advised the Association that use of the aide to perform ISS duties in that school year would be temporary (FF 7).

<sup>2</sup>The same result would obtain if the Association's opening statement at the April 27, 2006 hearing was construed as a motion to amend its charge.

September 6, 2006

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IROQUOIS SCHOOL DISTRICT  
Case No. PERA-C-05-608-W

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

Sincerely,

Peter Lassi  
Hearing Examiner

Enclosure

cc: Iroquois School District  
Pittsburgh Regional Office