

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

REYNOLDS EDUCATION ASSOCIATION, PSEA/NEA :
:
v. : Case No. PERA-C-05-542-W
:
REYNOLDS SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On November 22, 2005, the Reynolds Education Association, PSEA/NEA (Association), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Reynolds School District (District) had violated sections 1201(a)(1) and 1201(a)(5) of the Public Employee Relations Act (Act) "by assigning bargaining unit work to non-bargaining unit employees." "Specifically," according to the Association, the District "now requires the school secretaries and the school nurse assistant to assume some of the school nurse's duties (such as handing out feminine supplies to students) when she is not in the building."

On January 4, 2006, the Secretary of the Board dismissed the charge for failure to state a cause of action. The Secretary explained as follows:

"Although as a general matter a public employer cannot unilaterally remove work from a bargaining unit, an employer does not commit an unfair practice where exigent circumstances require performance of work and bargaining unit members are unavailable to perform the work at issue. FOP Lodge 24 v. City of Jeanette, 36 PPER 68 (Final Order, 2005). It appears from the Specification of charges that the nurse is an itinerant who is not always in the building when the need for distribution of certain materials is required which necessitates distribution of the materials by another person who may not be a member of the bargaining unit. Under such limited circumstances, the employer commits no unfair practice by allowing a non-bargaining unit member to distribute the materials."

On January 23, 2006, the Association filed exceptions alleging that the Secretary erred in dismissing the charge. The Association also filed an amended charge specifying a number of occasions where "the nurse's assistant was called to the High School to perform duties which were previously exclusively performed by the school nurse."

On February 21, 2006, the Board issued an order directing remand to secretary for further proceedings in which it directed the Secretary to issue a complaint on the charge as amended. On March 13, 2006, the Secretary issued a complaint and notice of hearing assigning the charge as amended to conciliation and directing that a hearing be held on May 5, 2006, if conciliation did not resolve the matter by then. The hearing was held as scheduled. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On July 11, 2006, the District filed a brief by mail. On July 12, 2006, the Association filed a brief by mail.

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

FINDING OF FACT

1. On May 14, 1971, the Board certified the Association as the exclusive representative of a bargaining unit that includes "regular teachers, librarians, guidance counselors, home and school visitor, head teachers, and nurses" employed by the District. (Case No. PERA-R-377-W)

DISCUSSION

The Association has charged that the District committed unfair practices under sections 1201(a)(1) and 1201(a)(5) of the Act "by assigning bargaining unit work to non-

bargaining unit employees." The bargaining unit work at issue is that of the school nurse. Although the charge as amended only alleges that school secretaries and a nurse assistant are the non-bargaining unit employees to whom the District has assigned that work, the Association contends in its brief that the District assigned that work not only to them but also to principals and an athletic trainer who are non-bargaining unit employees as well. In addition, although the charge as amended does not allege that the District assigning that work to any of those non-bargaining unit employees unilaterally, the Association contends in its brief that "[s]uch a transfer of bargaining unit work to other parties is a mandatory subject of bargaining, and the District failed to engage in any negotiations with the Association" (brief at 10).

The District contends that the charge should be dismissed because the school secretaries, the nurse assistant, the principals and the athletic trainer only performed the work of the school nurse in exigent circumstances.

An employer commits unfair practices under sections 1201(a)(1) and 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). An employer is under no obligation to bargain over the transfer of bargaining unit work to non-members of the bargaining unit in exigent circumstances, however. City of Jeanette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006).

The charging party has the burden of proving the charge by substantial evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). If the charging party does not prove by substantial evidence that an employer acted unilaterally when it transferred bargaining unit work to non-members of the bargaining unit, no violation of the Act may be found. City of Philadelphia, 23 PPER ¶ 23152 (Final Order 1992).

A close review of the record does not show that the District acted unilaterally. Thus, even assuming without deciding that the District "assigned bargaining unit work to non-bargaining unit employees" as charged, the charge as amended must be dismissed for lack of proof that the District did so unilaterally. City of Philadelphia. Under the circumstances, the District's exigent circumstances defense need not be addressed.

In support of its contention that the District committed unfair practices as charged, the Association cites Keystone Central School District, 28 PPER ¶ 28170 (Proposed Decision and Order 1997), for the proposition that "the Board does not employ a *de minimis* standard in deciding whether or not an employer is obligated to bargain over a transfer of bargaining unit work to nonmembers of the bargaining unit." 28 PPER at 373. The fact that the Board does not employ such a standard is irrelevant, however, because regardless of the amount of work involved no violation of the employer's obligation to bargain over the transfer of bargaining unit work to non-members of the bargaining unit may be found absent a showing that the employer acted unilaterally. City of Philadelphia.

The Association also cites Cocalico Area School District, 35 PPER 118 (Proposed Decision and Order 2004), as a case directly on point. The Association's reliance on that case is misplaced. In that case, the hearing examiner found an employer in violation of sections 1201(a)(1) and 1201(a)(5) because the employer transferred bargaining unit work to non-members of the bargaining unit unilaterally. As noted above, however, the record here does not show that the District acted unilaterally. Thus, Cocalico Area School District is distinguishable on the facts.

CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the Act.
2. The Association is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.

4. The District has not committed unfair practices under sections 1201(a)(1) and 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 complaint is rescinded and the charge as amended dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourth day of August 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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August 4, 2006

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REYNOLDS SCHOOL DISTRICT
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Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Lewis P. McEwen
Maddox B. Stokes