

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TUSCARORA EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-05-567-E
 :
 TUSCARORA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On December 7, 2005, the Tuscarora Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Tuscarora School District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). On January 6, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on April 13, 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. Both parties filed post-hearing briefs on or before May 30, 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. On January 29, 1971, the Board certified the Association as the exclusive representative of a bargaining unit of District employes, which is "comprised of non-supervisory professional personnel: teachers, counselors, nurses, and like work; and excluding all non-professional employes, supervisors, first level supervisors, and confidential employes as defined in the Act." (PERA-R-760-C)
4. As of July 2003, the District's administrative staff at the high school included the principal and an assistant principal (William Pupo). Pupo requested and received medical leave for the 2003-2004 school year. (N.T. 55-56, 61)
5. Effective August 18, 2003, the District transferred Rodney Benedick from a teaching position at the high school to the position of dean of students at the high school for a period of one year. (N.T. 60; District Exhibit 1)
6. As of the 2003-2004 school year, the District transferred the assistant principal at the middle school to a position at one of the elementary schools. (N.T. 59-60)
7. Effective August 18, 2003, the District transferred Michelle Bennett from a teaching position at the District's middle school to the position of dean of students at the middle school for the first semester of the 2003-2004 school year. The District subsequently approved Bennett's appointment as dean of students for the entire school year. (N.T. 60; District Exhibit 1)
8. Before the 2003-2004 school year, the District did not employ anyone in the position of dean of students. (N.T. 28)
9. Effective July 1, 2004, Michelle Bennett was appointed to the position of assistant principal at the middle school. (N.T. 61, 64-66; District Exhibit 3)

10. After the 2003-2004 school year, the District did not employ a dean of students at the middle school. (N.T. 65-66)

11. High School Assistant Principal Pupo remained on medical leave during the 2004-2005 school year. (N.T. 66, 72-73)

12. The District reappointed Rodney Benedick as dean of students at the high school for the 2004-2005 school year. The District also appointed Mark Wise and Richard Heckman as grade level deans (ninth and twelfth grades, respectively) for 2004-2005. (N.T. 66-70, 72-73; District Exhibits 4, 5)

13. While acting as grade level deans in 2004-2005, Mark Wise also performed teaching duties (although not a full teaching load) and Richard Heckman also performed the duties of athletic director. (N.T. 68-70)

14. In February 2005, the high school principal left District employment to take a position with another school district. On or about February 14, 2005, the District appointed Rodney Benedick as high school principal, contingent upon his completion of all certification requirements. Benedick completed his certification requirements in the spring of 2005. (N.T. 70-72; District Exhibit 6)

15. On March 4, 2005, the Association filed a petition for unit clarification with the Board, seeking to add the position of dean of students to the professional bargaining unit. On May 25, 2005, the Secretary of the Board issued an order and notice of hearing directing a hearing, if necessary, on the Association's petition on August 25, 2005. By letter filed on July 14, 2005, the District advised the Board that it did not oppose the Association's petition. Consequently, there was no need for a hearing. On July 15, 2005, the Board issued a Nisi Order of Unit Clarification, which amended the professional bargaining unit to include the position of dean of students. (N.T. 22-23; Association Exhibits 8, 9; PERA-U-05-132-E)

16. High School Assistant Principal Pupo did not return from his medical leave and retired at the end of the 2004-2005 school year. (N.T. 73)

17. The District appointed Michael Adamek to the position of assistant principal at the high school for the 2005-2006 school year. (N.T. 73)

18. The District has not employed any deans of students at the high school since the 2004-2005 school year. (N.T. 74)

19. After the 2004-2005 school year, Mark Wise returned to a full-time teaching schedule and became chairperson of the math department. Richard Heckman continued to perform the duties of athletic director. (N.T. 73-74)

20. The District's job description for the position of dean of students¹ provides that the essential duties and responsibilities of the position include overseeing the central office detention program, determining and issuing disciplinary action for minor level disciplinary infractions, issuing disciplinary action for all bus conduct referrals and issuing disciplinary action for parking and traffic violations. (N.T. 9-10; Association Exhibit 1)

21. The job description for the dean of students was essentially copied from the job description for the assistant principal. However, certain duties and responsibilities of assistant principals that require administrative certification, such as suspending students, were omitted from the dean of students' job description. (N.T. 78, 94-98, 101-102)

22. During the 2003-2004 and 2004-2005 school years, all of the suspensions at the high school were issued by the principal's office because the deans of students lacked the necessary certification to issue such discipline. (N.T. 99-102)

¹ The job description states that it was approved by the school board on August 25, 2003 (Association Exhibit 1).

23. While acting as a dean of students at the high school during the 2004-2005 school year, Richard Heckman handled disciplinary referrals from teachers. (N.T. 37-40; Association Exhibit 11)

24. During the 2005-2006 school year, the assistant principal handled disciplinary referrals at the high school. (N.T. 40-41, 79-80)

25. Both before and after creation of the position of dean of students, assistant principals were responsible for student discipline. (N.T. 103)

DISCUSSION

The Association alleges that the District violated Section 1201(a)(1) and (5) of PERA by unilaterally transferring bargaining unit work to non-unit personnel. The Association contends that the disciplinary duties that were performed by the deans of students at the District's middle school and high school constituted bargaining unit work and that the District committed an unfair practice by unilaterally assigning this work to assistant principals.

The District initially argues that the Association's charge of unfair practices was not timely filed under PERA's four-month limitations period² because there was no dean of students at the middle school after the end of the 2003-2004 school year, and there were no deans of students at the high school after the end of the 2004-2005 school year. According to the District, any unfair practice occurred in June 2004 (middle school) or June 2005 (high school), such that the Association's charge filed in December 2005 was untimely.

Section 1505 of PERA requires that unfair practice charges be filed within four months of when the charging party knew or should have known of the action constituting the alleged unfair practice. Erie City School District, 37 PPER 32 (Order Directing Remand to Secretary for Further Proceedings, 2006). Where the charge alleges a unilateral transfer of bargaining unit work to non-unit personnel, the limitations period begins to run on the date that non-unit personnel actually commence performance of the work. Athens School District, 23 PPER ¶ 23060 (Final Order, 1992), aff'd, 23 PPER ¶ 23183 (Court of Common Pleas of Bradford County, 1992).

Here the alleged unfair practice was the use of assistant principals to perform work formerly performed by the deans of students. Thus, the four-month limitations period began to run when assistant principals actually commenced performance of the work.

As of the beginning of the 2004-2005 school year, there was no longer a dean of students at the middle school. Instead, the individual who was employed as the dean of students in 2003-2004 was now employed as the assistant principal. Thus, any transfer of dean of students work at the middle school occurred at the beginning of the 2004-2005 school year. Accordingly, the Association's charge filed in December 2005 was untimely to the extent that it concerned the middle school.

As of the beginning of the 2005-2006 school year, a new assistant principal was working at the high school (in place of the former assistant principal who had been on medical leave for two years), and the District no longer employed deans of students at the high school. Thus, the Association's charge filed within four months of the start of the 2005-2006 school year was timely insofar as it concerned the high school.

Turning to the merits of the charge, an employer commits an unfair practice by unilaterally transferring work that is exclusively performed by the bargaining unit to non-unit personnel. Abington School District, 32 PPER ¶ 32129 (Final Order, 2001). See also City of Jeannette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006). Even where the work at issue is not exclusively performed by the bargaining unit, an employer commits an unfair

² 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.

practice by failing to negotiate with the union before significantly altering its past practice regarding assignment of the work to members and non-members of the unit. Id.

Here the Association failed to prove that the disciplinary duties that were performed by the deans of students were exclusively performed by members of the professional bargaining unit. To the contrary, assistant principals were responsible for student discipline both before and after creation of the dean of students position.

Furthermore, the dean of students position was not clarified into the professional bargaining unit until July 2005. Thus, the deans of students were not acting as members of the professional bargaining unit when they performed the duties at issue during the 2003-2004 and 2004-2005 school years. Accordingly, there is no history of the bargaining unit performing this work, as is necessary to prevail on a removal of bargaining unit work charge.

Also, the deans of students only performed the work at issue when there was no assistant principal present and working, such as in 2003-2004 and 2004-2005 when the high school assistant principal was on medical leave. In 2005-2006, there was a newly-hired assistant principal present and working at the high school. Therefore, the District's use of that individual to perform disciplinary duties was consistent with its past practice and was not a violation of PERA.

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) and (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 twenty-third day of June, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

June 23, 2006

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

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Marcia A. Bender
Tuscarora School District