

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MIFFLIN COUNTY EDUCATIONAL SUPPORT :
PERSONNEL ASSOCIATION, ESPA/PSEA/NEA :
 :
v. : Case No. PERA-C-05-551-E
 :
MIFFLIN COUNTY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On November 23, 2005, the Mifflin County Educational Support Personnel Association, ESPA/PSEA/NEA (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 January 4, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on March 27, 2006. On that date, all parties in interest appeared before the examiner and entered into stipulations and introduced documentary evidence. The Association made a closing argument in lieu of filing a brief. The District filed a letter brief on April 6, 2006.

The examiner, on the basis of the stipulations 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 Association is the exclusive representative of a bargaining unit of nonprofessional employes of the District. (N.T. 12-13; Board Exhibit 1, ¶ 1)
4. The District and the Association are parties to a collective bargaining agreement (CBA) that is effective from July 1, 2004 to June 30, 2007. (N.T. 6-7, 12-13; Board Exhibit 1, ¶ 2; Joint Exhibit 2)
5. The CBA contains a recognition clause, in which the District recognizes the Association as the exclusive representative of the nonprofessional bargaining unit, including the position of educational interpreter. (N.T. 6-7; Joint Exhibit 2 at 2)
6. The CBA contains a salary schedule, which sets forth the hourly rate of pay for the position of educational interpreter. The CBA provides that the hourly rate of pay for the educational interpreter in the 2005-2006 school year is \$17.12. (N.T. 6-7, 12-13; Board Exhibit 1, ¶ 3; Joint Exhibit 2 at 22)
7. The CBA also provides that "[h]ourly rates for new employees hired on or after July 1, 2004" are as follows:

"START	65% of hourly rate
End of Year 1	65% of hourly rate
End of Year 2	70% of hourly rate
End of Year 3	70% of hourly rate"

(N.T. 6-7; Joint Exhibit 2 at 22)

8. On or about May 18, 2005, the District and parents of a deaf student entered into an IEP that required the District to provide a full-time sign language interpreter for all of the student's graded subjects. (N.T. 12-13; Board Exhibit 1, ¶ 5)

9. On or about June 22, 2005, a bargaining unit member accepted a position as an administrative secretary effective August 1, 2005, rather than keeping her position of educational interpreter. (N.T. 12-13; Board Exhibit 1, ¶ 6)

10. On or about June 23, 2005, the newly vacated educational interpreter position was posted, with the deadline of July 7, 2005 for applications. (N.T. 12-13; Board Exhibit 1, ¶ 7)

11. A member of the bargaining unit was notified that she was the successful bidder for the posted position of educational interpreter with an effective start date of August 29, 2005. This member of the bargaining unit was the only applicant for the position. (N.T. 12-13; Board Exhibit 1, ¶ 8, 10)

12. On or about August 4, 2005, the successful bidder for the educational interpreter vacancy was awarded the position of classroom/child care aide, and informed the District that she was no longer interested in the educational interpreter position. (N.T. 12-13; Board Exhibit 1, ¶ 12, 13)

13. On or about August 5, 2005, the educational interpreter position was posted for a second time, with a deadline of August 18, 2005 for applications. No members of the bargaining unit responded to this posting. (N.T. 12-13; Board Exhibit 1, ¶ 14, 15)

14. In order to comply with the deaf student's IEP, the District placed advertisements for a full-time sign language interpreter in two local newspapers and in PSBA's publication. The District also contacted numerous individuals, institutions and organizations in an attempt to fill the position. On August 25, 2005, the District contacted George Giousios, who had completed a four year degree at Bloomsburg. (N.T. 12-13, 17-20; Board Exhibit 1, ¶ 16-31)

15. One of the individuals contacted by the District regarding the job vacancy was a freelance sign language interpreter, who demanded \$45 per hour. (N.T. 17-20; Board Exhibit 1, ¶ 28)

16. An individual who saw the District's advertisement for a full-time sign language interpreter scheduled an appointment with the District and then canceled it due to the pay rate being offered.

(N.T. 17-20; Board Exhibit 1, ¶ 30)

17. On or about August 26, 2005, the District and the parents of the deaf student reconvened the IEP team to discuss options for the student's education if a full-time sign language interpreter could not be located. The student's parents would not agree to any other options. (N.T. 17-20; Board Exhibit 1, ¶ 32, 33)

18. On or about August 26, 2005, after the aforementioned IEP meeting, the District offered the educational interpreter position to George Giousios at a rate of \$17.12 an hour, which is not the starting rate in the CBA. (N.T. 12-13; Board Exhibit 1, ¶ 34)

19. Giousios' first day of employment as a District employe and as the educational interpreter was August 29, 2005, which was the date the IEP was to be implemented. (N.T. 12-13; Board Exhibit 1, ¶ 35)

20. On or about September 23, 2005, the District's board of directors approved the hiring of Giousios effective August 29, 2005. (N.T. 12-13; Board Exhibit 1, ¶ 36)

21. On August 31, 2005 and again on September 12, 2005, the Association sent e-mails to the District challenging the hiring of an educational interpreter at a rate of pay that was not set forth in the CBA, and requesting bargaining over the matter. However, the District did not respond to the Association's requests for bargaining. (N.T. 13-15, 17-22; Association Exhibits 1, 2)

22. The District did not bargain a change in the contractual wage rate for the position of educational interpreter. (N.T. 17-22)

DISCUSSION

The Association alleges that the District violated Section 1201(a)(1) and (5) of PERA by appointing an employee to the position of educational interpreter at a rate of pay well in excess of the rate established by the CBA. The District argues that due to alleged changes in the qualifications for the educational interpreter position,¹ it is actually a new position that is not covered by the CBA. In support of its argument, the District cites Appalachia Intermediate Unit, 24 PPER ¶ 24165 (Proposed Decision and Order, 1993).

However, in Appalachia Intermediate Unit, the hearing examiner found that a newly created position involved different duties than a previously existing bargaining unit position. Accordingly, the examiner determined that the employer had not unilaterally transferred work from the bargaining unit to a new position outside the unit.

In contrast, there is no evidence of record that the educational interpreter hired for the 2005-2006 school year performs different duties than previously employed educational interpreters. Therefore, this case is distinguished on the facts from Appalachia Intermediate Unit.

In the CBA, the District expressly recognized the Association as the exclusive representative of the nonprofessional bargaining unit, including the position of educational interpreter (FF 5). The District also agreed to the hourly rate for the position in the 2005-2006 school year, and further agreed that new employees hired on or after July 1, 2004 would receive sixty-five percent of the hourly rate in their first year of employment with the District (FF 6, 7). It is undisputed that the educational interpreter hired for the 2005-2006 school year is being paid an hourly rate that exceeds the applicable rate for a new employee under the CBA, in that this employee is receiving one hundred percent of the hourly rate rather than sixty-five percent as the CBA specifies (FF 6-7, 18-19). Thus, the District has clearly failed to comply with its agreement with the Association concerning wages for the educational interpreter position.

The District essentially argues that it did not commit an unfair practice because it was compelled to pay the educational interpreter a premium wage rate to acquire his services. However, the Board rejected a similar argument in Delaware Valley School District, 17 PPER ¶ 17104 (Proposed Decision and Order, 1986), 17 PPER ¶ 17156 (Final Order, 1986). In that case, the Board found that mathematics teachers with an understanding of computer science were "in demand" by school districts. Nevertheless, the Board held that the school district committed an unfair practice by hiring such a teacher at a salary exceeding the appropriate step on the contractual salary scale. In the proposed decision in Delaware Valley, the hearing examiner stated:

"The District argues that a new employee may be hired at a rate mutually agreed upon by the individual and the District and this wage rate determines at which position the individual teachers will enter the collective bargaining agreement's salary schedule.

In Jefferson-Morgan School District, 9 PPER 9056 (Final Order, 1978), the Board responded to a similar factual situation in which a school district hired an individual into a bargaining unit position and unilaterally negotiated the individual's salary higher than the salary schedule negotiated in the collective bargaining agreement for other bargaining unit members. The school district argued that it was free to bargain directly with the individual in question because he was not yet a member of the bargaining unit when the agreement was made. The Board responded by stating that the school district was not free to negotiate a salary with the individual upon his entry into the bargaining unit that did not appear within the salary schedule of the collective bargaining agreement. The Board recognized that the salary schedule was arrived at as a result of good faith collective bargaining negotiations

¹ Although there is reference in the record to "Act 57," there is no indication how this legislation may have affected the qualifications for the educational interpreter position. Nor would evidence of a change in qualifications show that the position is new where, as here, there is no evidence that the duties of the position have changed.

with the association and intended to govern wages, hours and conditions of bargaining unit positions for its duration. The Board recognized that a district may not come to salary terms at a figure which does not appear on the agreed upon salary schedule contained in the collective bargaining agreement 'to do otherwise would be to reduce the collective bargaining agreement to an empty shell without any real meaning '

[T]he Board recognized that the collective bargaining agreement salary schedule is intended to govern the terms of salary to be paid teachers in the bargaining unit and this would prevent the school district from dealing directly with individual teachers on individual salary. Once agreeing to the salary schedule the school district must apply that schedule to all bargaining unit employes including an individual upon entry into the bargaining unit. Section 606 of the Act provides the following:

Representatives selected by public employes in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employes in such unit to bargain on wages, hours, terms and conditions of employment.

43 P.S. § 1101.606

* * *

It is clear in this matter that there was direct dealing with an individual to enter into an agreement separate and apart from that bargained with the exclusive bargaining representative and as such will constitute a violation of Section 1201(a)(1) and (5) of the Act"

17 PPER at 278-279. See also Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993), appeal denied, 537 Pa. 626, 641 A.2d 590 (1994)(employer commits unfair practice by negotiating terms and conditions of employment directly with an employe that are inconsistent with CBA); Saucon Valley School District, 32 PPER ¶ 32143 (Proposed Decision and Order, 2001), 32 PPER ¶ 32167 (Final Order, 2001), aff'd, 33 PPER ¶ 33198 (Court of Common Pleas of Northampton County, 2002)(same).

The same result must obtain here. By hiring a new employe at an hourly rate that exceeded the applicable rate in the CBA, the District violated its statutory duty to bargain with the Association over employe wages. Accordingly, the District will be directed to cease paying the employe an hourly rate that is inconsistent with the CBA. The wage rate to be paid to a current or prospective member of the bargaining unit is a matter that must be bargained with the Association.

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 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 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) Cease paying the educational interpreter a wage rate that exceeds the applicable rate in the CBA;

(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 April, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MIFFLIN COUNTY EDUCATIONAL SUPPORT :
PERSONNEL ASSOCIATION, ESPA/PSEA/NEA :
v. : Case No. PERA-C-05-551-E
MIFFLIN COUNTY SCHOOL DISTRICT :

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 ceased paying the educational interpreter a wage rate that exceeds the applicable rate in the CBA; that it has posted a copy of the proposed decision and order as directed therein; and that it has served a copy of this affidavit on the Association at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public

April 20, 2006

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MIFFLIN COUNTY SCHOOL DISTRICT
Case No. PERA-C-05-551-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: Mifflin County School District