

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

HAZLETON AREA EDUCATION SUPPORT :  
PERSONNEL ASSOCIATION :  
 :  
v. : Case No. PERA-C-03-462-E  
 :  
HAZLETON AREA SCHOOL DISTRICT :

**AMENDED PROPOSED DECISION AND ORDER<sup>1</sup>**

On October 27, 2003, Hazleton Area Educational Support Personnel Association (Complainant or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Hazleton Area School District (District or Respondent) violated Sections 1201(a)(1), (3) and (5) of the Public Employe Relations Act (Act) by unilaterally removing the position of secretary to the assistant superintendent from the unit of nonprofessional employes represented by the Association and designating it as a confidential employe.

On January 29, 2004, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties and April 29, 2004, in Harrisburg was assigned as the time and place of hearing, if necessary.

The hearing was necessary and the Board assigned Thomas P. Leonard, Esquire, a hearing examiner of the Board. The hearing was continued to June 10 and again to October 28, 2004 at which time the case was consolidated with PERA-U-04-54-E for hearing. At the hearings, all parties of interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Examiner, on the basis of the testimony presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Hazleton Area School District is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (Act) with its address located at 1515 West Twenty-Third Street, Hazleton, PA 15146. (N.T. 4, Board Exhibit 1)

2. That the Hazleton Area Educational Support Personnel Administration is an employe organization within the meaning of Section 301(3) of the Act, with its address located at 1188 Highway #315, Wilkes-Barre, PA 18702-6929. (N.T. 4, Board Exhibit 1)

3. That the Association as the exclusive representative of a bargaining unit of all full-time and regular part-time bus drivers, cafeteria workers, clerical employes and aides, as certified and clarified in these Board Orders: Case Nos. PERA-R-2327-E, PERA-R-82-524-E, PERA-U-86-117-E, PERA-U-91-8-E, and PERA-U-03-402-E. (N.T. 4, Board Exhibit 1)

4. That the District and the Association are currently involved in bargaining a successor to the collective bargaining agreement. Negotiations began in January 2003. (N.T. 39, 57-58)

5. That Joseph R. Andrews is the assistant superintendent. He was promoted to the position in the summer of 2003, after a 35 year career in the District. Twenty-four of those years were as an administrator. (N.T. 9, 26)

6. That Andrews reports to Superintendent Frank Victor. Andrews is the coordinator of all guidance services. He evaluates district administrators and is involved in the

<sup>1</sup> This Amended Proposed Decision and Order is issued to correct typographical errors in the March 13, 2006 PDO found on page 2, line 45; page 3, line 15 and page 4, lines 14, 37 and 38.

recruitment, interviewing and hiring of all professional employees. Andrews testified that the last person to hold this position, John Ritz, did not do these functions. Andrews also is a member of the District's bargaining team. He has no knowledge if his predecessor Ritz had a similar role. (N.T. 35)

7. That before promoting Andrews, the last time the District employed an assistant superintendent was in 1995, when Ritz retired from the position. (N.T. 9, 24)

8. That Ritz supervised a secretary, initially Harriet Harris then Roseanne Bonafair. The secretary position was in the bargaining unit represented by the Association. (N.T. 10, 23)

9. That in 1993, the District posted a job opening for the secretary position that Harris was appointed to fill that listed the a job description as:

Duties of the position shall be of a general secretarial nature with strong emphasis on typing, filing, record keeping, attendance reporting. Salary will be calculated according to experience based upon the S-2 category of the established salary schedule.

Applicants for the position shall have a strong computer background with experience in student accounting, and computerized scheduling.

(N.T. 10, 24, 34 Association Exhibit 1)

10. That at the time of her placement in the position Harris was classified as an S-2 Secretary. She had been employed in the District since 1973. At the time, the District had three classifications for secretary: S-1, S-2 and S-3. At the present time, there is only one classification: secretaries. (N.T. 11, Association Exhibit 2)

11. That in 1995, the District promoted Harris to the position of Coordinator of Child Accounting. The District appointed Roseann Bonafair to the position of secretary to the Assistant Superintendent. She worked for Assistant Superintendent Ritz. Bonafair vacated the position, leaving Ritz without a secretary. Ritz then retired from his position. From approximately 1995 until 2003, the District functioned without an assistant superintendent. (N.T. 12, 23-24, 50-51 Association Exhibit 3)

12. That on July 16, 2003, Mary Bast and Karen Tomashunis, Association Co-Presidents, wrote to Frank Victor, superintendent inquiring into two matters, the second of which was whether there would be an additional secretarial position resulting from the newly created assistant superintendent position. (N.T. 13-14, Association Exhibit 3)

13. That Victor never replied in writing, but he did verbally tell Bast that the District would just be taking from the existing secretarial pool and work with the secretaries that were there. (N.T. 14)

14. That on September 18, 2003, the District's Board of School Directors hired Maureen Ryba to the position of confidential secretary to the assistant superintendent at an annual salary of \$30,000. The starting salary for new secretaries, at the time, was approximately \$18,600. Ryba was not a current employe of the District, but worked for the District's food service contractor. (N.T. 15-16, Association Exhibit 4)

15. That the District did not post the position of confidential secretary to the assistant superintendent. (N.T. 16)

16. That Ryba is the mother of Anthony Ryba, District business manager. (N.T. 44)

17. That business manager Ryba's secretary, Jamie Schnee, is a confidential employe within the meaning of Section 301(13) of the Act. (N.T. 45)

18. That Superintendent Victor's secretary, Gertrude Keck, is a confidential employee within the meaning of Section 301(13) of the Act. (N.T. 44)

19. That in her position, Ryba is responsible for receiving calls from employees calling off work, which is part of the substitute management system. Prior to Ryba's employment, the call-in work was done by Lynn Calvello, secretary in the payroll office, a bargaining unit position. Ryba is also responsible for going through applications for teacher positions to see that they are in order. She maintains Andrews' calendar and prepares all his correspondence. She prepares and maintains the student expulsions files and the professional employees' evaluation files. (N.T. 20, 38-39)

20. That assistant superintendent Andrews is a member of the District's collective bargaining team, along with Victor, Business Manager Ryba and the Transportation Director. He has attended all the negotiation sessions since he started in the summer of 2003. (N.T. 39-40)

21. That Ryba is Andrews' only secretary. Andrews interacts with Ryba throughout the entire day. She researches issues for him, she performs secretarial duties and answers questions from the public. Ryba transcribes Andrews' notes after the negotiation sessions. (N.T. 36, 46-47)

#### DISCUSSION

The Association's charge of unfair practices alleges that the District unilaterally removed the position of secretary to the assistant superintendent from the unit of nonprofessional employees.

The Association's charge will be sustained. The law is well settled that the removal of bargaining unit work is a mandatory subject of bargaining and an employer commits an unfair practice when it fails to bargain with the exclusive representative before transferring bargaining unit work to an employee outside the unit. Midland Borough School District v. PLRB, 560 A.2d 303 (Pa. Cmwlth. 1989), PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978). Furthermore, whether the position was properly included in the bargaining unit is a question for the Board to decide. Ermel v. Commonwealth, 470 A.2d 1061 (Pa. Cmwlth. 1984).

The facts show that the position at issue performs work duties similar to the prior secretaries to the assistant superintendent that were bargaining unit positions. Furthermore, Ryba is doing the substitute call system work that was just recently done by another bargaining unit position. Even if we set aside this evidence and agree with the District that the position is a newly created one, a public employer has a duty to seek unit clarification before it designates a position as confidential and thus outside the bargaining unit. Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992). The District's failure to file a unit clarification petition until February 6, 2004, after the Association filed this present charge, constitutes a violation of the Act.

#### CONCLUSIONS

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

1. That the Hazleton Area School District is a public employer within the meaning of Section 301(1) of the Act.

2. That the Hazleton Area Education Support Personnel Association is an employee organization within the meaning of Section 301(3) of the Act.

3. That the Board has jurisdiction over the parties hereto.

4. That the District has committed unfair practices within the meaning of Section 1201 (a)(1) and (5) of the Act.

5. That the District has not committed unfair practices within the meaning of Section 1201(a)(3) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act;

2. Cease and desist from refusing to bargain collectively in good faith with the exclusive representative of the employes of the Hazleton Area School District, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action that the hearing examiner finds necessary to effectuate the policies of the Act:

(a) Declare a vacancy in the position of secretary to the assistant superintendent and post the vacancy pursuant to the parties' past practice or the collective bargaining agreement;

(b) Agree to bargain with the Association over the wages, hours and terms and conditions of employment for the position of secretary to the assistant superintendent;

(c) Post a copy of this decision and order within five (5) days from the effective 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

(d) 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 with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourteenth day of March, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

Hazleton Area School District (District) hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of the Public Employee Relations Act; that it has declared a vacancy in the position of secretary to the assistant superintendent and posted the vacancy for bidding pursuant to the parties' past practice or the collective bargaining agreement; that it has posted this proposed decision and order in conspicuous place in the District and that it has served a copy of this affidavit on the Association.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Signature of Notary Public