

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

EASTON AREA EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION :  
: v. : Case No. PERA-C-05-320-E  
: EASTON AREA SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On July 22, 2005, the Easton Area Educational Support Personnel Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Easton Area School District (District or Respondent) violated Section 1201(a)(5) of the Public Employe Relations Act (Act) by unilaterally subcontracting the District's food services work.

On November 17, 2005, 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 January 6, 2006, in Allentown, was assigned as the time and place of hearing, if necessary.

The hearing was necessary and was held as scheduled before Thomas P. Leonard, Esquire, a hearing examiner of the Board, at which time all parties in 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. That Easton Area School District is a public employer within the meaning of Section 301(1) of the Act.
2. That Easton Area Educational Support Personnel Association is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Association is the exclusive representative of the paraprofessional employes of the District, including food service employes. (N.T.)
4. That the District and the Association are parties to a collective bargaining agreement covering the wages, hours and terms and conditions of employment of the District's paraprofessional employes and food service employes. That in 2004 and 2005, the District and the Association negotiated a successor agreement to the collective bargaining agreement to expire that year. The parties signed the agreement in May, 2005. (N.T. 24-25, 65-68)
5. That beginning in 2004, the District began studying the possibility of subcontracting the food services. On October 25, 2004, at a public meeting of the Board of School Directors, the District established an ad hoc committee on food services to study the various options it had with regard to food services. (N.T. 14, District Exhibits 1-4)
6. That the food services committee met at several meetings in 2004 and 2005. Several of the meetings were advertised as public meetings. Association representatives attended several of the meetings. (N.T. 14, 15, 16, 18, 20, 34, 58 District Exhibits 1-12)
7. That on April 20, 2005 the District's Board of Directors decided to issue a request for proposals for the food service work. The District established May 23 as the date the proposals were due. (N.T. 46, 58, District Exhibit 13(c))

8. That on April 21, 2005, the District sent the Association's president, Suzanne Greenleaf, one of the blank RFPs. (N.T. 60, District Exhibit 13-C)

9. That the District received four proposals in response to its RFP: from Chartwells, Nutrition, Inc., Metz and Associates Ltd. Food Services and Sodexo. The District rejected the proposal from Chartwells because it did not include figures for how much the contract would cost should the food service employees be employed by the new company. (N.T. 64)

10. That Greenleaf was present at a school board meeting when the three remaining proposals were reviewed by the board. (N.T. 65)

11. That on June 27, the District's Board of Directors voted to enter into a contract with Sodexo for the District's food service work. (N.T. 29, 34, 58 District Exhibit 21)

12. That on July 13, 2005, the District's Associate Director of Human Resources Department, Angela Donaldson, notified the food service employees that the District's Board of Directors took action on June 27 to contract out all food service operations and that their employment as District employees would be terminated. (N.T. 9, 10, Association Exhibit 2, District Exhibit 21)

13. That the notice of termination informed the employees that because of the termination of services that they were not entitled to compensation for unused sick days under the collective bargaining agreement. The notice also informed the employees that their health insurance benefits would be cancelled effective August 31, 2005 and that they would be eligible for COBRA. (N.T. 9, 10, 60 Association Exhibit 2, District Exhibit 21)

14. That on July 13, 2005, Sodexo wrote to the former food service employees of the District to invite them to apply for and interview for positions with the company. (N.T. 10, Association Exhibit 3)

15. That at no time did the District ever show the Association representatives of the Association a copy of the winning proposal from Sodexo or any of the other proposals. (N.T. 31-32, 60-61)

16. That at no time did the District ever offer to negotiate or bargain with the Association over the decision to subcontract the food services to Sodexo. (N.T. 61)

17. That at the same time the District was deciding to subcontract the food services work, it was negotiating a new collective bargaining agreement with the Association. The District representative told the Association bargaining team that the District did not want to transfer all the work to a private firm. It only wanted to transfer the management of the food services but that it was accepting proposals to transfer the work and the management. (N.T. 65-67)

#### DISCUSSION

The Association's charge of unfair practices alleges that the District unilaterally subcontracted the food services work in the District without bargaining with the Association in violation of Section 1201(a)(5) of the Act.

The District contends that it satisfied its legal obligations by inviting the Association to meetings regarding the subcontracting, by inviting the Association to respond to the District's request for proposals and by sending the Association the proposals that it received from potential subcontractors.

A public employer has a duty to bargain with the employee representative over subcontracting before it transfers the bargaining unit work. Morrisville School District v. PLRB, 687 A.2d 5 (Pa. Cmwlth, 1996), citing PLRB v. Mars Area School District 480 Pa. 295, 389 A.2d 1073 (1978). Regarding the work at issue in the present case, food services, there is a similar duty to bargain, even when the employer alleges the transfer is due to financial problems. Minersville School District v. PLRB, 475 A.2d 962 (Pa.

Cmwlth. 1984). An employer must negotiate in good faith to a bona fide impasse before subcontracting bargaining unit work. Teamsters Local #205 v. Peters Creek Sanitary Authority, 34 PPER ¶ 27 (Final Order, 2003) An employer desiring to subcontract must seek out its bargaining counterpart and engage in good faith negotiations without prompting or prodding from the union. Peters Creek Sanitary Authority, supra. See also Snyder County Prison Board, 36 PPER ¶ 96 (Final Order, 2005)

In the present case, the District did not fulfill its duty to bargain over the subcontract as required by the law. On the occasion of the retiring of its longtime food service coordinator, the District took the opportunity to set up an ad hoc committee of the school board to see if privatizing the food services would provide cost savings. The District did not conduct this study in secrecy, but in fact kept the Association aware of its progress. However, the District did not offer to bargain with the Association over the Sodexo proposal that it eventually chose from the submitted bids. The District did keep the Association apprised of the status of the RFP process. However, the law requires more. The law requires the District to offer to bargain with the Association over the subcontracting proposal, which it did not do here, which constitutes an unfair practice under Section 1201(a)(5) of the Act.

Accordingly, to remedy this unfair practice, the District should rescind the contract with Sodexo and return the food service employees to the status quo that existed before June 27, 2005.

#### CONCLUSIONS

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

1. That Easton Area School District is a public employer within the meaning of Section 301(1) of the Act.
2. That the Easton Area Educational Support Personnel Association is an employe 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)(5) 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 refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in the paraprofessional unit, including but not limited to the discussing of grievances with the exclusive representative.

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

- (a) Rescind the June 27, 2005 food services contract with Sodhexo;

(b) Offer to all the food service employes in writing unconditional reinstatement to their former employment with the District without any prejudice to any rights or privileges enjoyed by them;

(c) Make the former food service employes whole for any losses in pay and benefits sustained by them as the result of the Sodhexo contract;

(d) Pay interest at the simple rate of six percent per annum on any back pay due the employes from the date of their termination with the District to the date they are offered unconditional reinstatement to their former employment;

(e) The back pay due shall be computed on the basis of each separate calendar quarter or portion thereof during the period stated above. The quarterly period shall begin with the first day of January, April, July and October. The pay shall be determined by deducting from a sum equal to that which he normally would have earned for each quarter or portion thereof earnings which he actually earned or with the exercise of due diligence would have earned in other employment, earnings which he would have lost through sickness and any unemployment compensation received by him. If the District claims lack of due diligence, it shall be obligated to establish that there was substantially equivalent employment reasonably available and that due diligence was not exercised to find interim employment. Earnings in one particular quarter shall have no effect on the liability for any other quarter;

(f) 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

(g) 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 seventh day of February, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

EASTON AREA EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION :  
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**AFFIDAVIT OF COMPLIANCE**

Easton Area School District (District) hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(5) of the Public Employe Relations Act; that it has rescinded the June 27, 2005, food services contract with Sodhexo; that it has offered unconditional reinstatement to the former food services employes of the District without any prejudice to their rights and privileges; that it has made whole the former employes for all lost wages and benefits; that it has posted the proposed decision and order; and that it has served a copy of this affidavit on the Association.

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Signature/Date

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Title

SWORN AND SUBSCRIBED TO before me

The day and year first aforesaid.

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Signature of Notary Public

February 3, 2006

A. Martin Herring, Esquire  
1845 Walnut Street, Suite 2240  
Philadelphia, PA 19103

Alan B. McFall, Esquire  
134 Broadway  
Bangor, PA 18013

EASTON AREA SCHOOL DISTRICT  
PERA-C-05-320-E

Enclosed is a copy of the proposed decision and order issued this date in the above matter.

Sincerely,

THOMAS P. LEONARD  
Hearing Examiner

Enclosure  
Easton Area School District