

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

LUZERNE INTERMEDIATE UNIT 18 :  
EDUCATION SUPPORT PROFESSIONALS :  
 :  
v. : Case No. PERA-C-06-276-E  
 :  
LUZERNE INTERMEDIATE UNIT 18 :

**PROPOSED DECISION AND ORDER**

On June 15, 2006, the Luzerne Intermediate Unit 18 Educational Support Professionals (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Luzerne Intermediate Unit 18 (IU or Respondent) violated Sections 1201(a)(1), (5), (8) of the Public Employee Relations Act (Act) by continuing to use outside company to perform bargaining unit work, the same work that was subject to a settlement agreement in resolution of PERA-C-05-380-E.

On August 17, 2006, 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 October 24, 2006, in Wilkes-Barre was assigned as the time and place of hearing, if necessary, before Thomas P. Leonard, a hearing examiner of the Board.

The hearing was necessary, but was continued at the request of the parties on the basis of their stated interest in submitting the dispute to the examiner. On December 21, 2006, the parties submitted Stipulation of Facts to the Examiner.

The Examiner, on the basis of the Stipulation of Facts and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. That the parties stipulated that the Luzerne Intermediate Unit #18 is a public employer within the meaning of the Public Employee Relations Act.
2. That the parties stipulated that the Luzerne Intermediate Unit #18 Education Support Professionals (Association) is an employe organization within the meaning of the Act.
3. That the parties stipulated that the Association filed a charge of unfair practices at PERA-C-05-380-E for removing custodial work out of the unit.
4. That the parties stipulated that on February 17, 2006, the parties resolved the case referenced in Finding of Fact 3 by agreeing to cease and desist from removing work, return the work to the unit and post and fill a custodial position.
5. That the parties stipulated that on or about early April, 2006, the Association became aware that the IU has continued to use an outside agency to perform cleaning services.

**DISCUSSION**

The Association has charged IU #18 with continuing to use an outside company to do custodial work that was done by bargaining unit employes. The Association also alleges that this matter violates a settlement agreement of a prior case involving the same issue.

An employer commits an unfair practice 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 A2d 1073 (1978). Furthermore, an employer commits an unfair practice if it fails to follow the terms of a settlement agreement the parties reached to resolve another unfair practice charge. New Castle

The parties' stipulation of facts demonstrates that in early April 2006, the Association became aware that the IU was using an outside company to perform cleaning services done by bargaining unit employes. The use of an outside company also violated a settlement agreement of a similar charge that was reached in earlier in the year.

The IU's use of an outside company to do cleaning work done by the bargaining unit violates the Act. Also, the IU's failure to follow the terms of a settlement of an unfair practice charge of a similar allegation just months before violates the Act.

The Association has also alleged a violation of Section 1201(a)(8) of the Act, which makes it an unfair practice for an employer to fail to comply with the provisions of an arbitration award deemed binding under Section 903 of the Act. This section is inapplicable to the present dispute. Accordingly, the charge alleging a violation of that section will be dismissed.

#### CONCLUSIONS

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

1. That the Luzerne Intermediate Unit #18 is a public employer within the meaning of Section 301(1) of the Act.
2. That the Luzerne Intermediate Unit #18 Education Support Professionals 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 IU #18 has committed unfair practices within the meaning of Section 1201 (a)(1) and (5) of the Act.
5. That IU #18 has not committed unfair practices within the meaning of Section 1201(a)(8) 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 IU #18 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 an employe representative which is the exclusive representative of employes in the support professionals unit, 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) Pay the unit employes who would have worked on those occasions when the IU #18 contracted with an outside company to do cleaning services;
  - (b) As agreed to in the settlement of PERA-C-05-380-E, post a vacancy for a custodial position and fill it;

(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 employees 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 fifth day of March, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner

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**AFFIDAVIT OF COMPLIANCE**

The Luzerne Intermediate Unit #18 (IU #18) hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of the Public Employe Relations Act; that it has paid the unit employes who would have worked on those occasions when the IU#18 contracted with an outside company to do cleaning services; that it has posted the proposed decision and order; and that it has served a copy of this affidavit on the Association.

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

\_\_\_\_\_  
Title

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

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