

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BLAIRSVILLE-SALTSBURG SCHOOL DISTRICT :
:
v. : Case No. PERA-C-07-127-W
:
BLAIRSVILLE-SALTSBURG EDUCATION :
SUPPORT PROFESSIONALS, PSEA/NEA :

PROPOSED DECISION AND ORDER

On March 27, 2007, the Blairsville-Saltsburg School District (District or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Blairsville-Saltsburg Education Support Professionals, PSEA/NEA (Association or Respondent) violated Sections 1201(b)(3) of the Public Employe Relations Act (PERA).

On March 19, 2007, the Secretary of the Board issued a Complaint and Notice of hearing in which June 25, 2007, in Johnstown was assigned as the time and place of hearing, if necessary.

The hearing was necessary, as was a second day of hearing, on October 24, 2007. At the hearings all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

Following the hearing, the District changed counsel, causing the briefing schedule to be extended to February 19, 2008 for the District's brief and March 17, 2008 for the Association's brief.

The hearing 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 the Blairsville-Saltsburg School District is a public employer within the meaning of Section 301(3) of PERA.
2. That the Blairsville-Saltsburg Education Support Professionals, PSEA/NEA, is an employe organization within the meaning of Section 301(1) of PERA.
3. On June 12, 1985, the Board issued an order certifying the Blairsville-Saltsburg Association of School Service Personnel, PSSPA/PSEA as the exclusive representative of a bargaining unit of District employes, which is comprised of "[a]ll full-time and regular part-time nonprofessional employes, and including but not limited to secretarial employes, cafeteria employes, teacher aides and nurses aides; and excluding maintenance-custodial employes, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act." (N.T. 10, Board Exhibit 1)
4. On December 21, 1990, the Board issued an order amending the prior order of certification to change the name of the employe organization to the Blairsville-Saltsburg Educational Support Personnel Association, ESPA/PSEA/NEA (Petitioner). (N.T. 10, Board Exhibit 1)
5. The on September 19, 2005 the District created the position of data collection processor. (N.T. 11, Joint Exhibits 2 and 3)
6. That the District hired Kathy Hankinson for the position of data collection processor. Ms. Hankinson still holds the position. (N.T. 52)
7. On February 21, 2006, the Association filed a petition for unit clarification with the Board, seeking to add the position of data collection processor to the bargaining unit of non-professional employes. (N.T. 10, Joint Exhibit 1)

8. That on November 28, 2006, a Board hearing examiner issued a proposed order of unit clarification in PLRB Case No. PERA-U-06-79-W; (39 PPER 159), finding that the position of data collection processor shared an identifiable community of interest with members of the non-professional bargaining unit represented by the Association. The bargaining unit was amended to include the position of data collection processor. The District did not file any exceptions to this proposed Order. (N.T. 10, Board Exhibit 1)

9. That on February 8, 2007, the Association requested that the District pay the data collection processor the same salary, benefits and privileges set forth in the CBA for the secretarial classification. (N.T. 15-16, District Exhibit 1)

10. That on February 16, the District's solicitor replied that the position of "data collection processor does not perform substantially similar duties as the secretaries in the bargaining unit." The District Superintendent contended that the position is a separate classification than the secretaries and should be paid differently. The Superintendent offered to meet with the Association to negotiate the issues. (N.T. 15-16, 18, District Exhibit 2)

11. The Association has not met to discuss or bargain with the District over the wages and terms and conditions of employment for the position of data collection processor. The Association has filed a grievance over the issue. The grievance is pending before an arbitrator. (N.T. 20)

12. That included in the duties of the data collection processor is the responsibility to maintain control and submit all information associated with the ACCESS Program, which is a federally funded program that reimburses school districts for providing special education services to low income students. ACCESS is operated through the states. The Commonwealth of Pennsylvania contracts with Leader Services, Inc. to administer the funding of ACCESS. To obtain proper reimbursement requires the District to conduct extensive record keeping and to coordinate records with the Individual Educational Plans (IEPs) for all the eligible students. (N.T. 26-28, Joint Exhibit 2)

13. That under the ACCESS Program, the District obtains reimbursement for services such as speech therapy, occupational therapy, physical therapy, nursing services, special transportation and psychological counseling. (N.T. 26-27, 52)

14. That the duties that Ms. Hankinson performs regarding the ACCESS Program require her to be knowledgeable about Individual Educational Plans (IEPs) for students. She reviews the billings from the different service providers to determine whether the IEP allows their service to be reimbursed. She is required to know the IEP's details, including the frequency of services, to know what services may be submitted for reimbursement. On occasion she requests the guidance counselor revise the IEP so that the services being provided can be covered by the IEP. (N.T. 55-59, 85)

15. That the duties of the data collection processor are district-wide and not limited to one building. (N.T. 18, 41)

16. That the data collection processor reports to the Director of Education, Theresa Hanley. However, she only sees Ms. Hanley once every couple of weeks. (N.T. 64)

17. That Ms. Hankinson's office is on the second floor of the high school building. It is the only office on that floor. Her supervisor, Ms. Hanley, is on the first floor of the central administrative offices, which is separated by a hallway from the high school building. (N.T. 39-41)

18. That the Director of Education has her own Secretary. The data collection processor does not perform any clerical duties for the Director of Education. (N.T. 52-53)

19. Ms. Hankinson's work brings her into regular contact with the Information Technology Coordinator, the Business Manager and the Superintendent. (N.T. 52, Joint Exhibit 2)

20. That with regard to the ACCESS Program, Ms. Hankinson was trained by Leader Services in the way the program operated. She then returned to the District to train Guidance Counselors and Building regarding the operation of the ACCESS Program. (N.T. 33)

21. That Ms. Hankinson must stay abreast of changes in the regulations and guidelines for reimbursement for special education services. She then independently decides to inform counselors and principals of the relevant changes. (N.T. 75-76)

22. That in connection with the ACCESS Program, Ms. Hankinson handles that job independently, without direct, daily supervision by Ms. Hanley. (N.T. 31, 60-61, 64, 74)

23. That the District has develop a program called Matrix, which creates a student profile for each student so that students who were experiencing academic failure "do not fall through the cracks," in the words of former superintendent, Dr. Robert Mencer. (N.T. 29)

24. That the District also participates in the 4 Sight Program developed by Johns Hopkins University to test students in grades 3 to 8 three times a year. The purpose of the program is improve reading and math test scores for the annual statewide assessment tests. (N.T. 28-29)

25. That with regard to the 4 Sight Program, Ms. Hankinson collects the data from the testing, insures its accuracy and submits the data to the Johns Hopkins data bank. (N.T. 28-29, 35, 64-65)

26. That Ms. Hankinson and the Technology Director are the only persons in the District who have authority for entering passwords into the 4 Sight Program. Ms. Hankinson is the only person who scans the test results for the 4 Sight Program. (N.T. 80)

27. That the data collection processor, Ms. Hankinson, coordinates the merging of the data from Matrix with the data from the 4 Sight Program. (N.T. 29, 47-48, Joint Exhibit 2)

28. That the District and the Association have two separate collective bargaining agreements for the employes in this unit. One agreement is for cafeteria workers. The other agreement, relevant to this proceeding, covers attendance officers, instructional assistants and secretaries. (N.T. 10, Joint Exhibit 1)

29. That under the CBA, the salary scale for the secretaries starts at \$26,950 the first year and rises to \$29,907 for the third year. (N.T. 90-91, Joint Exhibit 1)

30. That the salary for the data collection processor is \$36,390. (N.T. 89)

DISCUSSION

The District's charge of unfair practices alleges that the Association has refused to bargain over the wages, hours and terms and conditions of employment of the data collection processor, a position included in unit of nonprofessional employes in late 2006. The Board hearing examiner found the position shared an identifiable community of interest with the nonprofessional employes. The District did not file exceptions with the Board.

Under Section 1201(b)(3) of PERA, employe organizations are prohibited from refusing to bargain collectively in good faith with a public employer. 43 P.S. 1201(b)(3).

The Association concedes that it has not bargained with the District but argues that it was contractually privileged to refuse to negotiate for the data collection processor position, contending that it has a "sound arguable basis" in the collective bargaining agreement to support its refusal to bargain. Jersey Shore Area School District, 18 PPER ¶ 18061 (Proposed Decision and Order, 1987), 18 PPER ¶ 18117 (Final Order, 1987). The recognition clause that covers, inter alia, secretaries, provides that the District recognizes that Association as the exclusive representative for purposes of collective bargaining for the employes referred to in the PLRB certifications and all amendments thereto. In Article I, Section 2, the parties have specifically provided that the contract covers those employes encompassed within the PLRB certifications referred to in Section 1. The CBA includes a pay scale for secretaries.

In State System of Higher Education v. PLRB (SSHE II) 821 A.2d 156 (Pa. Cmwlth. 2003) the Commonwealth Court upheld the Board's dismissal of an unfair practice charge filed by SSHE against APSCUF for refusing to bargain over the recently accreted position of non-faculty trainer into the faculty unit saying that the position of non-faculty trainer was "substantially similar" to faculty trainer and accordingly placed no obligation on the parties to bargain over wages, hours and terms and conditions of employment. The Court cited with approval a prior case, State System of Higher Education v. Association of Pennsylvania State College and University Faculties (SSHE I), 800 A.2d 983 (Pa. Cmwlth 2002), which involved an arbitrator's award determining that the athletic trainers at issue were, except for faculty status, "identical to faculty trainers" and therefore were covered by the same CBA. SSHE II at 159.

The Association submits that the proposed order of unit clarification dated November 28, 2006, the record in that case and the testimony in the present case support its argument that that not only do the secretaries have an identifiable community of interest with the data collection processor but that their actual job duties are "substantially similar" to those of the processor.

The Association argues that the evidence shows that the duties of the data collection processor are substantially similar to the duties of the secretaries based upon the type of work performed, the educational and skill requirements, the hours, the areas of work and working conditions. The Association called eight secretaries who testified in detail as to their job duties. The secretaries testified that they, like the data collection processor, used computers, did filing, did typing and developed forms.

However, the District has presented a persuasive case that the data collection processor's duties are not substantially similar to the secretaries' duties. The District admits that the position involves some typing, filing and computer work but it points to several differences. As an initial factor, the data collection processor's supervisor, the director of education, has her own secretary and the data collection processor does not perform any clerical duties for the director of education.

Furthermore, the position is responsible for coordinating the District's compliance with the ACCESS Program. Her duties include seeing that the District receives the appropriate reimbursement for special education expenses. She has received additional training for this facet of her job. In turn, she trains other District employes on what is required to comply with the ACCESS Program. She does this work independently of daily, direct supervision. She must stay abreast of changes in the regulations and guidelines for reimbursement for special education services. She then independently decides to inform counselors and principals as to what changes relate to their work.

She also plays an important role in coordinated the data collection for the 4 Sight Program, which was developed by Johns Hopkins University to improve the reading and math ability of students in grades 3 to 11. She and Dan Cunkelman, the District's Technology Director, are the only District employes who have the authority to entering data into the computer for the 4 Sight Program and assigning passwords to other employes to enter the computer program for 4 Sight Program.

Related to the 4 Sight Program, Ms. Hankinson then coordinates the merging of the data from the 4 Sight Program with Matrix, a District program that monitors students who are facing academic failure. These duties bring her into close working contact with the Technology Director at a level not required for the secretary position.

Overall, the data collection processor's duties are district wide, not limited to a single building. She interacts with a variety of administrators, teachers, counselors throughout the District as well as service providers. Occasionally she deals with the secretary to the guidance counselor.

Compared to the secretaries, the data collection processor works with a greater degree of independence. She works without direct, daily supervision from the Director of Education. Also, unlike the secretaries, her office is not immediately adjacent to her supervisor.

All of these factors discussed above, when considered as a whole, distinguish this case from SHEE II, where the duties of the non-faculty trainer were practically "identical" to the faculty trainer. Here the data collection processor does not have identical or substantially similar duties. Accordingly, the Association does not have a sound arguable basis that the data collection processor's actual job duties are substantially similar to the actual job duties of the secretaries. The Association should bargain with the District over the wages, benefits and terms and conditions of employment for the position of data collection processor.

CONCLUSIONS

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

1. That the Blairsville-Saltsburg School District is a public employer within the meaning of Section 301(1) of the PERA.
2. That the Blairsville-Saltsburg Education Support Professionals, PSEA/NEA is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Association has committed unfair practices in violation of Sections 1201(b)(3) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Association shall:

1. Cease and desist from refusing to bargain collectively in good faith with the District over the wages, hours and working conditions of the data collection processor.
2. Take the following affirmative action:
 - (a) Submit to the District in writing an offer to bargain over the wages, hours and terms and conditions of employment of the data collection processor;
 - (b) 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
 - (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 become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this twentieth day of August, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner