

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MOUNTAIN VIEW EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION :  
:  
v. : Case No. PERA-C-07-393-E  
:  
MOUNTAIN VIEW SCHOOL DISTRICT :

**AMENDED  
PROPOSED DECISION AND ORDER**

On September 12, 2007, the Mountain View Educational Support Personnel Association (Union) filed a charge of unfair practices (Charge) with the Pennsylvania Labor Relations Board (Board) alleging that the Mountain View School District (District) violated Section 1201(a)(5) of the Public Employe Relations Act (PERA) by unilaterally establishing the wages for a newly hired computer technician in violation of the District's bargaining obligation under PERA and the parties' collective bargaining agreement (CBA).

On October 18, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on December 18, 2007 at the District in Kingsley, Pennsylvania. By letter dated November 20, 2007, the examiner consolidated the charge, for hearing purposes only, with several other charges. These other charges have different case numbers and involve the District and the Union, or the District and the union for the professional unit at the District. In the same letter, the examiner continued the hearing to January 25, 2008 at the same location. During the hearing on that date, both parties in interest were afforded a full opportunity to present testimonial and documentary evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The District is a public employer within the meaning of Section 301(1) of PERA. In the Matter of the Employes of the Mountain View School District, 33 PPER ¶ 33058 (Order Directing Submission of Eligibility List, 2002).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. In the Matter of the Employes of the Mountain View School District, 33 PPER ¶ 33058 (Order Directing Submission of Eligibility List, 2002).

3. On July 1, 2007, the District hired Matthew Georgetti into a newly created position. The District designated the position as the Information Technology Technician (Technician). The District pays Mr. Georgetti at the wage rate of \$12.00 per hour. The District agreed with Mr. Georgetti during his interview for the position that his wage rate would be \$12.00 per hour. The District did not negotiate with the Union over Mr. Georgetti's salary. (N.T. 68-69, 71).

4. Article VIII of the CBA contains the starting compensation rates for the following employes in the bargaining unit: Clerical, Aids and Monitors, Technical, Custodial/Maintenance and Food Service. The starting salary for a "Technical" employe in the bargaining unit for the 2007-2008 school year is \$18.33. (Joint Exhibit 1).

5. The Board certified the Union as the exclusive bargaining representative for the bargaining unit employes at Case No. PERA-R-01-529-E. In the certification, the Board defined the bargaining unit to include the following:

All full-time and regular part-time nonprofessional employes including but not limited to secretaries, custodians, aides, cafeteria employes and computer technology employes; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

(PERA-R-01-529-E, Nisi Order of Certification, April 15, 2002).

6. The District acknowledges that Mr. Georgetti's position is included in the bargaining unit. (N.T. 76, 82).

7. There are currently two computer technology positions in the District. Prior to the employment of Mr. Georgetti on July 1, 2007, Mr. Stuart was the sole computer technician in the District. The District designated the position held by Mr. Stuart as that of the "Information Technology Coordinator" (Coordinator). Mr. Stuart and Mr. Georgetti both report directly to the Business Manager. (N.T. 68; Association Exhibit 12; District Exhibit 1; In the Matter of the Employees of the Mountain View Sch. Dist., 33 PPER ¶ 33058 (Order Directing Submission of Eligibility List, Finding of Fact No. 7)).

8. Mr. Georgetti identified Association Exhibit 12 as the job description for his position and testified that his job duties include repairing, troubleshooting and maintaining the computers in the District as well as networking the computer equipment. Mr. Stuart and Mr. Georgetti perform substantially similar job duties. (N.T. 68-73; Association Exhibit 12; District Exhibit 1).

### DISCUSSION

In its charge, the Union claims that the District violated its bargaining obligation when it hired Mr. Georgetti into the position of Technician for \$12.00 per hour, thereby repudiating the CBA, which identifies the starting wage rate for the "Technical" employe classification at \$18.48 for the 2007-2008 school year. The Union alternatively alleges in its charge that, even if the Technician position is not covered by the CBA, at a minimum the District had an obligation to bargain Mr. Georgetti's wage rate rather than bypassing the Union and dealing directly with Mr. Georgetti.

Section 701 of PERA expressly requires that public employers bargain wages, hours and other terms and conditions of employment that are mandatory subjects of bargaining. 43 P.S. § 1101.701. Although a public employer is under no obligation to bargain the creation of new positions within one of its bargaining units, the employer must bargain the wages, hours and working conditions of the new position. Philadelphia Federation of Teachers, Local #3 v. Philadelphia Sch. Dist., 25 PPER ¶ 25090 (Final Order, 1994). Also, the Board has held that bargaining is necessary when a new position is clarified or created into an existing bargaining unit because "the parties, having negotiated their collective bargaining agreement before the positions were included in the unit, could not have intended their bargaining to have covered the positions at issue." State System of Higher Educ. v. APSCUF, 33 PPER ¶ 33037 at 79(Final Order, 2002), aff'd, 821 A.2d 56 (Pa. Cmwlth. 2003). However, a public employer is not required to and should not request to bargain wages, hours and working conditions for newly created positions, the job duties of which are "substantially similar" to existing unit positions. State System of Higher Educ. v. APSCUF, 800 A.2d 983, 987 (Pa. Cmwlth. 2002).

The District acknowledges that Mr. Georgetti's position is included in the bargaining unit. (F.F. 6; District Brief at 7). Also, the Board's certification order at Case No. PERA-R-01-529-E unambiguously mandates, that Mr. Georgetti's computer technician position is included in the bargaining unit, as a "computer technology employe[]." (F.F. 5). The District does not dispute that it did not apply the compensation provisions of Article VIII of the CBA and that it did not bargain Mr. Georgetti's wage rate with the Union. The remaining issues, therefore, are whether the District violated its bargaining obligation to the Union by failing to pay Mr. Georgetti at the starting contractual rate for "Technical" employes in the bargaining unit and, if not, whether the District committed a bargaining violation for refusing to bargain the salary for the position of Technician.

The CBA in this case covers a classification of employes called "Technical." The parties' use of this term in Article VIII, Section 1 demonstrates that the parties clearly contemplated that other employes could subsequently be hired into that classification and/or that Mr. Stuart may leave and need to be replaced. In this regard, the CBA provides for different starting salaries for that classification for every year covered by the CBA, which would be unnecessary if the District and the Union did not contemplate that new

technology employes would be added to the unit. Although the District argues that Mr. Stuart receives the contractual rate due to his experience level, it would be speculative to assume that a replacement for Mr. Stuart would also have his experience level, and yet under the CBA, the District undoubtedly would have to pay his replacement the contractual rate. The record fails to demonstrate that the two positions, designated as Technician and Coordinator, require two different classifications under the CBA. Moreover, the record lacks substantial, competent evidence to support a finding that Mr. Georgetti's position would fall into a classification other than that of "Technical" as provided for and contemplated by Article VIII, Section 1 of the CBA.

The Union submitted the job description of Mr. Georgetti's Technician position, and the District submitted the job description of the Mr. Stuart's Coordinator position. Job descriptions alone are insufficient to establish the actual job duties of a given position. In the Matter of the Employees of Elizabeth Township, 33 PPER 33053 (Final Order, 2002)(stating that the Commonwealth Court and the Board have consistently held that determining whether an employe should be excluded from the bargaining unit, and thereby denied rights granted by the statute, requires an examination of the actual job functions performed by that employe, not a written job description or alleged prospective job functions), aff'd unreported, Elizabeth Township v. PLRB, 1521 C.D. 2002 (Pa. Cmwlth. March 17, 2003); Saucon Valley Sch. Dist, supra. Neither the Union nor the District offered testimony to corroborate the specific job duties listed in the job description for either position.<sup>1</sup> Mr. Georgetti did testify, however, that his job duties include repairing, troubleshooting and maintaining the computers in the District as well as working with the networking equipment along with Mr. Stuart. Mr. Stuart, as the only "Technical" employe before the arrival of Mr. Georgetti, performed many of the same duties as Mr. Georgetti currently performed. Based on this evidence of record, the examiner concludes that the Technician position and the Coordinator position are substantially similar.

The District approved the job descriptions for both positions. Although the duties contained therein are speculative without corroborative testimony, the District relies on them to assert that the two positions are different. However, a comparison of the two job descriptions reveals that the duties are substantially similar. In this regard, the examiner relied on the two written job descriptions, not to determine the actual job duties performed by Mr. Georgetti or Mr. Stuart, but rather to determine whether the District understood the job duties of the two positions to be substantially similar by comparison. Accordingly, based on the written job descriptions, it is clear that the District's position in this litigation, i.e., that the two positions are entirely different in terms of classifying them under the CBA, is belied by the fact that the job descriptions that it approved reveal the District's true position, belief and understanding that these two computer technician positions are indeed substantially similar. They are both "Technical" employes, as that term is used in the CBA, despite the position it has taken in this litigation.

There will always be slight differences in job duties between employes of the same classification. For example, secretaries in a school district generally perform secretarial work in the same classification even though they work for different people and perform different specific tasks on a daily basis due to the fact that their supervisors have different job duties. Also, a school district may create new bus driver positions because they need more drivers, but each individual driver may have different routes, hours or work loads; they may also drive different types of buses for different types and ages of students. Although there may currently be differences in the specific tasks actually performed by Mr. Stuart and Mr. Georgetti, clearly the classification of "Technical" employe, as it existed at the time of the CBA and as performed by Mr. Stuart before Mr. Georgetti arrived, included the duties currently performed by Mr. Georgetti as

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<sup>1</sup> The examiner sustained the Union's objection to testimony from the former school board member and current chief negotiator John Halupke regarding job duty comparisons based on the job descriptions because Mr. Halupke did not have first-hand knowledge of the actual job duties performed by either Mr. Georgetti or Mr. Stuart. Therefore, Mr. Halupke's reading of the job descriptions would not have corroborated those descriptions as actually performed by the employes who held those positions and was therefore not relevant to or probative of either the issue of whether the classification of "Technical" employe in Article VIII, Section 1 of the CBA included Mr. Georgetti's position or the issue of whether the District bargained Mr. Georgetti's salary.

Technician. In this regard, the positions currently designated as "Technician" and "Coordinator" are sufficiently similar within the meaning of SSHE, 800 A.2d at 987, to identify them as being encompassed within the same classification. Accordingly employees hired by the District for the purpose of maintaining, repairing and servicing the District's computers and computer-related hardware, software and systems are included in the "Technical" employe classification in Article VIII, Section 1 of the CBA. The District engaged in direct dealing with Mr. Georgetti and circumvented the exclusive bargaining representative for the unit of employes, which constitutes a violation of PERA. Millcreek Township Sch. Dist. v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993); Saucon Valley Sch. Dist., supra; AFSCME District Council 88 v. Warminster Township, 31 PPER ¶ 31156 (Final Order, 2000)(quoting the NLRB standard that "direct dealing with employees while there is an outstanding exclusive representative whose authority is unrevoked is no less a violation of the Act's collective bargaining requirements merely because the direct dealing was acceptable to or even emanated from the employees instead of the employer."). By directly dealing with Mr. Georgetti, the District also repudiated the CBA, which is also a bargaining violation under PERA.

In its brief, the District argues that the Union bears the responsibility for Mr. Georgetti's non-bargained and non-contractual pay because the Union "never requested 'meet & discuss' in reference to the creation of this position." (District Brief at 6). The District further contends that the Union chose not to follow its contractual obligations by remaining silent until the School Board hired Mr. Georgetti for the position even though the Union was aware that the District planned to hire Mr. Georgetti at \$12.00 per hour. (District Brief at 6). The District maintains that, under the Management Rights clause of the CBA, "the obligation for notification rests with the employee organization," subject only to the School Code, (District Brief at 6), and that the creation of the new position was reserved to the District under the same clause. (District Brief at 6).

First, the examiner can find no contractual provision imposing the burden on the Union to approach the District to bargain changes in bargaining unit wages or classifications, which are desired by the District. Absent such a contractual provision, the District has an absolute duty to bargain changes in wages for any member of the bargaining unit where that employe's wages are not covered by the existing contract or where the District proposes wages that are contrary to express contractual provisions. State System of Higher Education, 33 PPER 33037; State System of Higher Education, 800 A.2d at 987. The effect of having an obligation to bargain wages, hours and working conditions is that the employer must seek out the union, not vice versa, and obtain agreement from the union before it makes changes to a mandatory subject of bargaining. Snyder County Prison Board v. PLRB, (Pa. Cmwlth. 2006)(stating that when a public employer seeks to make changes to wages, hours or working conditions, it has "a duty to seek out its bargaining counterpart and engage in good faith negotiations without prompting or prodding from the Union."); International Association of Firefighters, Local No. 713 v. City of Easton, 20 PPER ¶ 20098 (Final Order, 1989) (noting that shifting the burden to the union would permit a public employer to avoid its statutory obligation to bargain changes regarding a mandatory subjects, thereby forcing the union to bargain out from under a fait accompli which the employer has already implemented). The Union had no obligation to bargain or "meet and discuss" with the District regarding the District's desire to pay Mr. Georgetti anything less than the contractual rate, notwithstanding the District's allegations that the Union was aware that the District was creating a separate job description for Mr. Georgetti that may be different from that of Mr. Stuart's and notwithstanding whether the Union knew that the District planned to pay Mr. Georgetti less than the contractual rate.

The District indeed possesses the managerial prerogative to create the Technician position, as it argues in its brief, both under PERA, Philadelphia Sch. Dist., supra, and the provisions of the "Management Rights" clause in the CBA. (Joint Exhibit 1). However, nowhere in the Management Rights clause does it mention that the "obligation for notification rests with the [Union]," as argued by the District. (District Brief at 6). Indeed, the language in the Management Rights clause does not address the issue presented here. The Commonwealth Court and the Board have held that boilerplate language in a management rights clause does not provide the employer with a contractual privilege to unilaterally alter mandatory subjects of bargaining and does not constitute the requisite clear and unmistakable waiver of bargaining obligations and union approval before such changes are made. Crawford

County v. PLRB, 659 A.2d 1078, 1082 (Pa. Cmwlth. 1995); Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993)(stating that in order to find a waiver of bargaining rights, the language relied upon must show a clear and unmistakable waiver); Fairview Township Police Ass'n v. Fairview Township, 31 PPER ¶ 31019 (Final Order, 1999). The Management rights clause in the instant case does not contain any indication that the Union agreed to permit the District to unilaterally establish wage rates for newly created positions in the bargaining unit in violation of existing contractual classifications that apply to the new positions where the job duties are substantially similar.

Accordingly, the examiner concludes that the District violated Section 1201(5) of PERA, as charged, by directly dealing with Mr. Georgetti and by refusing to start Mr. Georgetti at the contractual wage rate of \$18.48, as provided in Article VIII of the CBA.

#### CONCLUSIONS

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

1. The Mountain View School District is a public employer within the meaning of Section 301(1) of PERA.
2. The Mountain View Educational Support Personnel Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Mountain View School District has committed unfair practices in violation of Section 1201(a)(5) of PERA.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the Mountain View School 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 an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

2. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately pay Mr. Georgetti the contractual starting pay rate for the classification of Technician for the 2007-2008 school year of \$18.48 per hour;

(b) Immediately make Mr. Georgetti whole and pay him backpay for the difference between the wages earned at the rate of \$12.00 per hour and the wages he should have earned at the rate of \$18.48 per hour for all hours worked, vacation time earned and taken, sick time earned and taken as well as pension contributions, less any offsets for tax liability, from the first day of Mr. Georgetti's employment on July 1, 2007 until the date of payment of the contractual rate of \$18.48 per hour.

(c) Immediately pay interest at the simple rate of six percent per annum on any and all backpay due Mr. Georgetti, including leave pay, from the date of his hire until the date the District increases his wage rate to \$18.48 per hour;

(d) 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

(e) 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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifteenth day of April, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MOUNTAIN VIEW EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION :  
v. : Case No. PERA-C-07-393-E  
MOUNTAIN VIEW SCHOOL DISTRICT :

**AFFIDAVIT OF COMPLIANCE**

The Mountain View School District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(5) of the Public Employee Relations Act; that it has ceased and desisted from refusing to bargain collectively in good faith with the Union as ordered in paragraph 1 of the Order; that it has paid Mr. Georgetti the contractual starting pay rate for the classification of "Technical" employe for the 2007-2008 school year of \$18.48; that it has made Mr. Georgetti whole and paid him backpay in the manner prescribed in paragraph 2(b) of the Order; that it has paid Mr. Georgetti interest in the manner prescribed in paragraph 2(c) of the Order; that it has posted a copy of the decision and order in the manner prescribed in paragraph 2(d) of the Order ; and that it has served a copy of this affidavit on the Union at its principal place of business.

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

\_\_\_\_\_  
Title

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

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Signature of Notary Public