

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

NORTH POCONO EDUCATIONL SUPPORT :  
PERSONNEL ADMINISTRATION :  
v. : Case No. PERA-C-06-495-E  
NORTH POCONO SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On October 5, 2006, the North Pocono Educational Support Personnel Association, (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the North Pocono School District (District or Respondent) violated Sections 1201(a)(1) and (5) of the Public Employe Relations Act (Act).

On December 7, 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 March 1, 2007, in Scranton was assigned as the time and place of hearing, if necessary.

The hearing was necessary, but was continued to April 10, 2007 and again to May 23, 2007 and held before Thomas P. Leonard, Esquire, a hearing examiner of the Board. At that 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 the North Pocono School District is a public employer within the meaning of the Public Employe Relations Act.

2. That the North Pocono Educational Support Personnel Association is an employe organization under the meaning of the Act.

3. That the Association represents the District's nonprofessional employes, including business office employes.

4. That the District and the Association are parties to a collective bargaining agreement for the term of July 1, 2003 to June 30, 2008, covering the wages, hours and terms and conditions of employment of the nonprofessional employes. (Joint Exhibit 1)

4. That prior to February, 2006, the District's payroll was done by a payroll clerk, a bargaining unit position. (N.T. 7, 12- Joint Exhibit 5)

5. That in February 2006, the payroll clerk was Kathryn May, who held the position from February, 2005. (N.T. 25)

6. That prior to February, 2005, the payroll clerk was Dawn Coco, who held the position for several years. (N.T. 18, 21-22)

7. That on February 9, 2006, the payroll clerk, Kathryn May, was assigned to the job of temporary human resource supervisor. (N.T. 7)

8. That Ms. May continued to do payroll in her new position. (N.T. 7)

9. That on June 28, 2006, the District's Board of Directors appointed Ms. May as human resources supervisor. Ms. May continued to do payroll work. (N.T. 7)

10. That the District did not engage in bargaining with the Association regarding the removal of the payroll work from the unit. (N.T. 8)

11. That on July 6, 2006, the Board posted the position of business office clerk. In September, 2006, the Board hired for this position. (N.T. 8, Joint Exhibit 2)

12. That the business office clerk is in the bargaining unit but does not do payroll. (N.T. 8, Joint Exhibit 5)

13. That on October 19, 2006, the Board of the School District posted a new position of staff accountant. (N.T. 9, Joint Exhibit 3)

14. That the School District Board treats the position of staff accountant as a non bargaining unit position. (N.T. 9, Joint Exhibit 4)

15. That the staff accountant does payroll and other duties. (N.T. 9)

16. That on November 8, 2006, the School District Board of Directors hired a staff accountant. (N.T. 10, Joint Exhibit 4)

17. That since November 8, 2006, the staff accountant has been doing payroll work. (N.T. 10, Joint Exhibit 4)

#### DISCUSSION

The Association's charge of unfair practices alleges that the District promoted a bargaining unit employe, Kathy May, to a non-unit position of Human Resource Supervisor and assigned to her, in her new position, the payroll work she had done in her previous bargaining unit position, thereby violating Sections 1201(a)(1) and (5) of the Act.

A public employer violates Section 1201(a)(5) of the Act if the employer refuses to bargain over a mandatory subject of bargaining. Appeal of Cumberland Valley School District, 483 Pa. 13, 394 A.2d 946 (1978). The transfer of any bargaining unit work to nonmembers of the bargaining unit is a subject over which an employer must bargain. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978).

The District contends that it was under no obligation to bargain before transferring the payroll work from the unit because the transfer was a Section 702 "matter of inherent managerial policy" relating to "organizational structure and the selection and direction of personnel." 43 P.S. 1101.702. This transfer of the payroll work actually happened in two stages. The first stage was the reassignment of Ms. May to a new position as human resources supervisor in February, 2006. The second stage was the subsequent transfer of the payroll duties to the staff accountant, a new position created eight months later, in October, 2006. The District also argues that the Association did not experience a net loss of positions because the District, as part of the restructuring, then hired a business office clerk, a new bargaining unit position.

In a similar fact situation, another hearing examiner of the Board found that a school district violated the Act by refusing to bargain with the employe representative over the transfer of duties to a nonunit position as part of an overall personnel restructuring. In Shippensburg Area Educational Support Personnel Association, PSEA/NEA v. Shippensburg Area School District, 29 PPER ¶ 29172 (Proposed Decision and Order, 1998), the District unilaterally transferred the unit duties of the payroll assistant to the nonunit position of business office assistant. Citing Mars Area School District, supra, the examiner found that the District was required to bargain over the transfer of any duties from a bargaining unit position. The examiner also addressed the "no net loss of positions" argument raised by the District in this case, "The fact remains that the bargaining unit lost work to a nonmember of the bargaining unit, which is the dispositive inquiry in transfer of bargaining unit work cases." 29 PPER at 402.

The District also argues that it was justified in unilaterally removing the payroll work from the bargaining unit because the last two incumbents in the position of payroll clerk provided payroll information to management during collective bargaining negotiations, making the position confidential under Section 301 (13) of the Act. If a public employer wants to remove a position as a confidential employe, the proper procedure is to file a unit clarification petition, not to unilaterally remove work from the bargaining unit.

Ermel v. Commonwealth, 470 A. 2d 1061 (Pa. Cmwlth. 1984); Commonwealth of Pennsylvania, Public Utility Commission, 21 PPER ¶ 21057 (Final Order 1990).

For the reasons set forth in this discussion, the District will be found to have violated its duty to bargain and committed unfair practices in violation of Sections 1201(a)(1) and 1201(a)(5) of the Act.

#### CONCLUSIONS

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

1. That North Pocono School District is a public employer within the meaning of Section 301(1) of the Act.
2. That North Pocono 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 Sections 1201 (a)(1) and (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 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 paraprofessional 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) Rescind the transfer of the bargaining unit work from the payroll clerk to non bargaining unit positions and reinstate that work to the bargaining unit;
  - (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 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 tenth day of January, 2008.

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**

North Pocono 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 rescinded the transfer of the payroll work to nonbargaining unit positions and has reinstated that work to the bargaining unit; that it has posted a copy of the decision and order as directed and that it has served a copy of this affidavit on the Association.

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

\_\_\_\_\_  
Title