

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

WILLIAMSPORT AREA SUPPORT PERSONNEL ASSOCIATION :  
: :  
v. : Case No. PERA-C-09-219-E  
: :  
WILLIAMSPORT AREA SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On June 16, 2009, the Williamsport Area Support Personnel Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Williamsport Area School District (District) violated sections 1201(a)(5) and (9) of the Public Employe Relations Act (PERA) when it subcontracted its transportation services.<sup>1</sup> On June 29, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 22, 2009, if conciliation did not result in a resolution of the charge by then. The hearing examiner held the hearing as scheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On December 30, 2009, the District filed a brief by deposit in the U.S. Mail. On December 31, 2009, the Association filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

**FINDINGS OF FACT**

1. On March 27, 1996, the Board certified the Association as the exclusive representative of a bargaining unit comprised of all full-time and regular part-time nonprofessional employes of the District, including but not limited to its transportation employes. (Case No. PERA-U-96-122-E)<sup>2</sup>

2. Effective July 1, 2003, the parties entered into a five-year collective bargaining agreement. During the term of the agreement, the District used its transportation employes to provide transportation services for its students. (N.T. 12-14, 74, 84-85; Association Exhibit 19)

3. On January 3, 2008, the parties met to begin negotiations for a successor collective bargaining agreement. The District indicated that it would be considering outsourcing "of certain areas" during the negotiations. (N.T. 15-17, 83, 110-111)

4. In mid-July 2008, the District provided the Association with a proposal from STA of Pennsylvania, Inc. (STA), to provide transportation services for the District over the next five years and with an analysis of the proposal by the Pennsylvania Association of School Business Officials (PASBO). Under the proposal, STA would provide daily bus runs for the District during the 2008-2009 school year for \$1,967,000.00, during the 2009-2010 school year for \$2,036,426.00, during the 2010-2011 school year for \$2,108,372.00, during the 2011-2012 school year for \$2,182,712.00, during the 2012-2013 school year for \$2,259,698.00 and during the 2013-2014 school year for \$2,339,456.00. STA also would buy the District's bus fleet for \$1,000,000.00. (N.T. 19-20, 75-76, 78-79, 112-114; Association Exhibits 21, 26)

5. At a bargaining session on August 18, 2008, the Association presented to the District 46 questions about outsourcing. The District answered most of them by September 9, 2009, and the rest within ten days thereafter. (N.T. 19-21, 76-78, 89, 98, 112-115, 172; Association Exhibits 23-24)

<sup>1</sup> The charge as filed under section 1201(a)(9) does not state a cause of action. Thus, the charge as filed under that section is dismissed at the outset.

<sup>2</sup> On October 11, 2006, the Board amended the certification to reflect that the Association has changed its name to the Williamsport Area Education Support Professionals, PSEA/NEA (Case No. PERA-U-05-461-E). Neither party has used the changed name of the Association, however, so neither will the hearing examiner.

6. On September 9, 2008, the District presented to the Association a proposal for a four-year collective bargaining agreement with wage increases of \$.85 in the first year and \$.50 in each of the next three years. Paragraph six of the proposal was as follows:

**"6. Outsourcing of Transportation & Trash Collection**

The Association understands that the District intends to outsource the District's transportation services beginning on January 1, 2009 and to outsource trash collection by June 30, 2009. As a condition of this agreement, the Association agrees not to contest such action by the District by filing any unfair labor practice, grievance, or other action."

(N.T. 23-24, 90; Association Exhibit 1)

7. On September 22, 2008, the Association presented to the District a proposal for a five-year collective bargaining agreement with wage increases of \$.85 in the first year, \$.50 in each of the next three years and \$.55 in the last year. After the District caucused, the Association presented to the District an additional proposal as follows:

"The Association agrees to withdraw the petition for unit clarification it filed seeking to include the following positions in the bargaining unit: Assistant Supervisor of Maintenance/Facility Operations, Supervisor of Vehicle Maintenance, Network Systems Administrator, and four (4) Administrative Support Secretarial Positions. The Association further agrees that it will not file a petition for unit clarification seeking to include any of these positions during the term of this Agreement.

In exchange for the Association's withdrawal of its petition for unit clarification, the District agrees that it will not outsource the student transportation services or the trash collection duties during the life of this Agreement."

(N.T. 24-26, 90-91, 115-117; Association Exhibit 2)

8. In the late fall of 2008, a mediator became involved in the negotiations. (N.T. 35)

9. On December 15, 2008, the District presented to the Association a proposal for a collective bargaining agreement under which the provision of transportation services would remain in-house and wages for members of the bargaining unit would be frozen for four years, with estimated savings to the District of approximately \$1,000,000.00. (N.T. 26-27, 91-92, 116-117; Association Exhibit 3)

10. On January 12, 2009, the Association presented to the District a chart estimating savings to the District of \$514,193.00 over five years if the District agreed to a change in health care coverage proposed by the Association. (N.T. 29-33; Association Exhibit 4)

11. On February 12, 2009, the Association presented to the District a proposal for a five-year collective bargaining agreement under which wages would be frozen in the first year, with estimated savings to the District of approximately \$220,000.00. Paragraph 10 of the proposal was as follows:

**"10. Transportation Employees**

The District agrees to keep all bargaining unit positions in the transportation department in the unit and will not contract out this work for the duration of this Agreement."

(N.T. 33-34; Association Exhibit 5)

12. At a bargaining session on March 26, 2009, the Association's chief negotiator (Cary Kurtz) asked the District's chief negotiator (Benjamin Pratt) how much money the District needed to save over the next four or five years to keep the transportation services in-house. Mr. Pratt said, "Find me a million dollars." (N.T. 12, 35-37, 109, 124-125, 135)

13. On April 22, 2009, Mr. Pratt wrote to Mr. Kurtz, "Where do we stand on meeting again? If the Association is unable to meet the needs of the District then it would appear we are at impasse." Mr. Kurtz replied, "The Association's bargaining team is still working on adjusting its proposal in an attempt to meet the district's demands to come up with a savings of \$1,000,000 in order [to] keep the jobs of the bus drivers, aides and mechanics in the bargaining unit." Mr. Pratt replied, "[T]he \$1,000,000 is just the starting point, it is the out years as well with retirement costs, health care, wage increases, etc that is a driving factor as well." Mr. Kurtz replied, "If that is the case, then I must repeat my request for your client to provide me with a detailed cost analysis for the contract period on the savings that will be realized by outsourcing these jobs" and that "If you need more than a million dollars, then tell me exactly how much more is needed and provide me with the documentation to support that demand." (N.T. 38-40; Association Exhibits 6-8)

14. On April 27, 2009, Mr. Pratt sent to Mr. Kurtz a chart estimating savings to the District of \$540,000.00 during the 2008-2009 school year, \$1,640,013.00 during the 2009-2010 school year, \$654,319.00 during the 2010-2011 school year, \$669,120.00 during the 2011-2012 school year and \$788,031.00 during the 2012-2013 school year if the District were to outsource its transportation services to STA. The calculations underlying the estimated savings were based on the District's transportation budget for the 2008-2009 school year, a projected 4.5% increase in its transportation budget for the 2009-2010 school year and projected 4% increases in its transportation budgets for the 2010-2011, 2011-2012 and 2012-2013 school years. The calculations underlying the estimated savings also were based on replacing four busses for \$440,000.00 each year. (N.T. 44, 93; Association Exhibit 11)

15. On April 28, 2009, Mr. Kurtz wrote to Mr. Pratt as follows:

"1. Over the past few years, the transportation costs have come in significantly under budget to the tune of \$440,000 over the 2006-2007 and 2007-2008 years alone. Why does the district continue to estimate its budget on numbers that are 4.5% and 4% higher than numbers that have proven to be much higher? Wouldn't a better estimate be an increase in the actual costs from the AFR's from the past several years? We need to be looking more at actual costs to compare apples and apples. The contract would lock the contractor into those amounts and inflated budget estimates only make the bid look even better from the district's perspective."

Mr. Kurtz also asked Mr. Pratt additional questions about the calculations underlying the estimated savings set forth in the chart. (N.T. 45; Association Exhibit 12)

16. Mr. Pratt referred Mr. Kurtz to the District's business administrator (Jeffrey Richards) for answers to his questions. (N.T. 47-48, 120, 140)

17. On April 30, 2009, Mr. Richards answered Mr. Kurtz's questions and together with Mr. Kurtz agreed that the cost of replacing four busses each year was \$380,000.00. Mr. Richards sent to Mr. Kurtz a revised chart reducing the estimated cost savings by \$60,000.00 each year. (N.T. 47-52, 92-93, 98, 142-144; Association Exhibit 13)

18. On May 14, 15 and 18, 2009, Mr. Richards provided Mr. Kurtz with information Mr. Kurtz requested to prepare a proposal for a bargaining session scheduled for May 21, 2009. (N.T. 52-54, 98-99; Association Exhibits 14-17)

19. On May 21, 2009, the Association presented to the District a proposal for a five-year collective bargaining agreement with a wage freeze for the 2008-2009 school year and \$.55 per hour wage increase in each of the next school years. Paragraph 10 of the proposal was as follows:

**"10. Transportation Employes**

The District agrees to keep all bargaining unit positions in the transportation department in the unit and will not contract out this work for the duration of this Agreement. Please see attached cost analysis to support this position. Additionally, the Association proposes that a joint committee be created with equal

members from the Administration and the Association to explore cost saving measures for student transportation such as consolidation of runs and other more efficient methods of operation."

Attached to the proposal was a cost analysis estimating savings to the District of \$707,732.00 through the 2012-2013 school year if the District accepted the proposal. The cost analysis was based on the District's actual transportation costs for the 2007-2008 and 2008-2009 school years and projected 4% increases in the transportation budgets for the 2010-2011 through the 2012-2013 school years. (N.T. 55-70, 94-96, 127; Association Exhibit 18)

20. Without asking any questions about the proposal and following a caucus, the District rejected the proposal. Mr. Pratt explained that the District did not believe that the Association had met or would be able to meet the savings the District needed to have not to outsource the transportation services. Mr. Pratt also indicated that the District's board of directors would be voting on June 2, 2009, to outsource the transportation services. Mr. Pratt did not indicate how much more in savings the District needed to keep the transportation services in-house. Mr. Kurtz asked Mr. Pratt if he was declaring an impasse. Mr. Pratt said, "Yes, I am." Mr. Kurtz said that the parties could not be at impasse because they had not gone thorough fact-finding. Mr. Pratt indicated that the District was only declaring an impasse in the negotiations over outsourcing and remained willing to bargain for the rest of the bargaining unit. Mr. Kurtz indicated that the Association would wait until after the board of directors voted to negotiate for the rest of the bargaining unit. The Association was open to further negotiations on outsourcing. (N.T. 70-74, 80, 94-96, 127-128, 138)

21. On June 2, 2009, the board of directors voted to outsource the transportation services, and the District entered into a seven-year contract with STA to provide daily bus runs for the District through the 2015-2016 school year. (N.T. 79, 94, 129; Association Exhibit 27)

22. On June 16, 2009, the Board appointed a fact-finder. (Case No. ACT 88-09-27-E)

#### **DISCUSSION**

The Association has charged that the District committed an unfair practice under section 1201(a)(5) of the PERA when it subcontracted its transportation services. According to the Association, because the District (1) solicited bids from potential subcontractors without notifying the Association of the solicitation, (2) provided the Association with no target or a moving target to avoid subcontracting, (3) refused to accept a proposal from the Association under which it would have saved more money than if it subcontracted, (4) prematurely declared an impasse in negotiations over subcontracting and (5) entered into a subcontract prior to fact finding, the District failed to meet its statutory obligation to bargain in good faith before it subcontracted its transportation services.

The District contends that the charge should be dismissed for lack of proof. According to the District, it met its statutory obligation to bargain in good faith before it subcontracted its transportation services because it (1) notified the Association of its intent to subcontract at the parties' first negotiation session, (2) provided the Association with a bid from a potential subcontractor, (3) answered all of the Association's questions about subcontracting, (4) negotiated in the presence of a mediator, (5) reached tentative agreements with the Association, (5) extended its initial deadline for subcontracting, (6) only declared an impasse when the Association indicated that it was unable to beat the savings under a subcontract approximately 18 months after the parties began the bargaining process and a year after they began bargaining over subcontracting in earnest and (7) did not receive a request from the Association to bargain further. The District also contends that the charge should be dismissed because the Association did not meet its own obligation to bargain in good faith.

In Easton Area School District, 37 PPER 57 (Final Order 2006), the Board explained the applicable law as follows:

"Where the issue is one of subcontracting, an employer must initiate negotiations with regard to subcontracting and engage in the bargaining process in good faith to a *bona fide* impasse on that issue before exercising its managerial right to subcontract any bargaining unit work. Morrisville School District v. PLRB, 687 A.2d 5 (Pa. Cmwlth. 1996); Teamsters Local #205 v. Peters Creek Sanitary Authority, 34 PPER 27 (Final Order, 2003). As the Board has repeatedly held, an employer desiring to make changes to wages, hours or working conditions through subcontracting of bargaining unit work, must affirmatively seek out its bargaining counterpart and actively engage in good faith negotiations over the issue of subcontracting without prompting or prodding from the union. Peters Creek Sanitary Authority, supra."

Id. at 181. See also PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978)(an employer violated section 1201(a)(5) by unilaterally transferring bargaining unit work to non-members of the bargaining unit).

As more fully set forth in the findings of fact, the record shows that on January 3, 2008, the parties began negotiations for a successor collective bargaining agreement (finding of fact 3), that on September 9, 2008, the District submitted to the Association a proposal under which the District's transportation services would be outsourced<sup>3</sup> (finding of fact 6), that on April 27, 2009, the District gave to the Association a chart indicating how much the District estimated it could save through the 2012-2013 school year if it outsourced its transportation services to a private vendor (STA) (finding of fact 14), that on May 21, 2009, the Association presented to the District a proposal under which its transportation services would remain in-house with projected savings to the District of \$707,732.00 through the 2012-2013 school year (finding of fact 19), that the District upon reviewing the proposal declared an impasse in the negotiations over outsourcing, explaining that it did not believe that the Association had met or would be able to meet the savings the District needed not to subcontract with STA (finding of fact 20), that on June 2, 2009, the District entered into a seven-year contract with STA under which STA is to provide transportation services for the District through the 2015-2016 school year (finding of fact 20) and that the District did not engage in fact finding before it entered into the contract with STA (findings of fact 21-22).

For the reasons that follow, application of the law to the facts of record leads to the conclusion that the District violated section 1201(a)(5) as charged.

Notably, the record shows that the District did not put the Association in a position to make a serious proposal about outsourcing until April 27, 2009, which is when it gave to the Association the chart indicating how much it estimated it could save through the 2012-2013 school year if it outsourced its transportation services (finding of fact 14). The record also shows that the parties had but one bargaining session after then before the District declared an impasse in their negotiations over outsourcing (findings of fact 19-20). The record further shows that the District declared the impasse without even asking questions about a proposal the Association presented at that bargaining session projecting savings to the District if the transportation services remained in-house (finding of fact 20). Although the District explained that it did not believe that the Association had met or would be able to meet the savings the District needed not to subcontract with STA, given that the parties had but one bargaining session after the District put the Association in a position to make a proposal, that the Association's proposal projected savings to the District if the transportation services remained in-house and that the District declared an impasse in bargaining without even asking questions about the proposal, the District's explanation finds no support in the record. Thus, regardless of whether or not the District solicited bids from potential subcontractors without notifying the Association of the solicitation and whether or not it provided the Association with a moving target to avoid subcontracting during their earlier negotiations, it is apparent that the District prematurely declared an impasse in the negotiations over outsourcing. For that reason alone, then, the District did not meet its obligation to engage in the bargaining process to a *bona fide* impasse before it outsourced its transportation services. See Morrisville School District, supra (an employer violated section 1201(a)(5) by declaring an impasse shortly after negotiations

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<sup>3</sup> The parties used the term outsourcing rather than the term subcontracting in their negotiations. The terms have the same meaning, however, so the hearing examiner has used them interchangeably.

over a subcontract became serious and after the union had indicated a willingness to meet the cost savings needed by the employer).

Moreover, the record shows that the contract the District entered into with STA is for three years longer than the STA bid at the center of the parties' negotiations over outsourcing (findings of fact 4 and 21). Thus, it is apparent that the District never afforded the Association the opportunity to meet the terms of the subcontract. For that reason as well, then, it is apparent that the District did not meet its obligation to engage in the bargaining process to a bona fide impasse before it outsourced its transportation services. See Upper Moreland School District v. PLRB, 695 A.2d 904 (Pa. Cmwlth. 1997) (an employer violated section 1201(a)(5) by not apprising the union of the terms it needed to meet to avoid a subcontract).

Furthermore, the record shows that the District outsourced its transportation services before the Board appointed a fact finder (findings of fact 21-22). Thus, the District had not exhausted available impasse resolution procedures before it outsourced its transportation services. For that additional reason, then, it is apparent that the District did not meet its obligation to engage in the bargaining process to a bona fide impasse before it outsourced its transportation services. See Snyder County Prison Board v. PLRB, 912 A.2d 356 (Pa. Cmwlth. 2006) (an employer violated section 1201(a)(5) by not exhausting available impasse resolution procedures, including fact finding, before it subcontracted bargaining unit work to a private vendor).

No merit is found in the District's contention that it met its statutory obligation to bargain in good faith before it subcontracted its transportation services.

Consistent with the District's contention, the record shows that the District indicated at the parties' first negotiation session in January 2008 that it would be considering outsourcing "of certain areas" during the negotiations (N.T. 15-17, 83, 110-111), provided the Association in mid-July 2008 with a bid from a potential subcontractor (N.T. 19-20, 75-76, 112; Association Exhibit 21), answered all of the Association's questions about subcontracting (N.T. 76-78, 98, 114-115, 172; Association Exhibits 23-24), negotiated in the presence of a mediator (N.T. 35), reached tentative agreements with the Association (N.T. 100-105; District Exhibits 1-4), extended its initial subcontracting deadline of January 1, 2009 (Association Exhibit 1) and declared an impasse in bargaining over subcontracting on May 21, 2008, approximately 18 months after negotiations began (N.T. 71, 80).

Contrary to the District's contention, however, the record does not show that the negotiations began in earnest approximately a year before the District declared the impasse. Rather, the record shows that the District did not even give to the Association the chart indicating how much it estimated it could save through the 2012-2013 school year if it outsourced its transportation services until April 27, 2009 (finding of fact 14), which is approximately one month before it declared impasse on May 21, 2009. Without that information, the Association was in no position to intelligently formulate a proposal for consideration by the District, and no serious negotiations could have occurred between the parties.

Contrary to the District's contention, the record also does not show that the Association indicated that it could not beat the savings under a subcontract. In support of its contention, the District submits that the Association's chief negotiator (Mr. Kurtz) admitted to the District's business administrator (Mr. Richards) that the Association could not meet the terms of the subcontract and that the Association did not request further negotiations after the District declared an impasse. According to Mr. Richards, however, Mr. Kurtz said, "Yes, the numbers, they're showing a savings for the District" (N.T. 145), which is hardly an indication that the Association could not beat the savings under the subcontract. Mr. Richards also testified that Mr. Kurtz "didn't feel that the Association could, in fact, come up with that type of savings, but the negotiations still had to move forward." Id. Mr. Richards, of course, was not competent to testify as to what Mr. Kurtz felt. In any event, as noted above, the record shows that the Association subsequently submitted a proposal projecting a savings to the District if its transportation services remained in-house. Thus, whatever Mr. Kurtz may have felt, it

is apparent that the Association indicated that it could beat the subcontract. Moreover, Mr. Kurtz testified without rebuttal that after the District declared an impasse he said that the parties could not be at impasse because they had not gone through fact-finding (N.T. 80), which again is hardly an indication that the Association could not beat the savings under the subcontract.

Furthermore, the fact remains that the parties had but one bargaining session after the District gave the Association the chart indicating how much it estimated it could save through the 2012-2013 school year if it outsourced its transportation services. The fact also remains that the Association presented at that bargaining session a proposal projecting a cost savings if the transportation services remained in-house, as does the fact that the District declared an impasse in negotiations over outsourcing without even asking questions about the proposal. The fact that the contract the District entered into with STA to provide transportation services is for three years longer than the STA bid at the center of the parties' negotiations over outsourcing remains as well, as does the fact that the District had not exhausted available impasse resolution procedures before it outsourced its transportation services. Thus, under the totality of circumstances, the District's contention finds no support in the record.

The District cites Mars Area Association of School Service Personnel, PSSPA/PSEA v. Commonwealth of Pennsylvania, PLRB, 538 A.2d 535 (Pa. Cmwlth. 1987), in support of its contention. In that case, the court affirmed the Board's dismissal of a charge alleging that an employer had not met its obligation to bargain to a bona fide impasse before subcontracting its transportation services. As the Court observed:

"In the instant case, the hearing examiner noted:

The District kept the Association fully apprised of all subcontracting developments, presented at least three counter proposals under which transportation services would have remained in-house, modified its bargaining position on a number of points at the bargaining table (e.g. overhead for secretaries, projected wage taxes, pattern for buying buses) and met with the Association at reasonable times.

Further, as the Board aptly noted, the District asked Myers to extend his deadline on accepting the bid beyond the original deadline 'so that the Association would have more time to meet the subcontractor's bid.'

Id. at 587. The record here does not show that the District likewise presented at least three counter proposals under which its transportation services would have remained in-house or modified its bargaining position on a number of points at the bargaining table. Thus, the facts here are distinguishable, and the District's reliance on that case is, therefore, misplaced.

Nor is any merit found in the District's contention that the charge should be dismissed because the Association did not bargain in good faith. According to the District, a lack of good faith on the part of the Association may be found in the fact that its chief negotiator (Mr. Kurtz) refused to take proposals from the District back to the Association (N.T. 91-92). The District, however, has not filed a charge alleging that the Association did not bargain in good faith. In Snyder County Prison Board, supra, the court held that "the Union's conduct is not at issue because the Prison Board did not file unfair labor practice charges against the Union for failing to request mediation." 912 A.2d at 367. Thus, whether or not the Association bargained in good faith is not at issue.

Moreover, in International Brotherhood of Painters and Allied Trades, Local 1968, 38 PPER 128 (Final Order 2007), the Board found that an employe organization is under no obligation to submit a contract proposal to its membership for a vote. As the Board explained:

"The fact that the Union has not agreed to the Employer's proposal to subcontract bargaining unit work and has declined to submit the Employer's final offer containing that proposal to a vote of its members does not rise to the level of

bargaining in bad faith. Indeed, Section 701 of PERA provides that the duty to bargain in good faith 'does not compel either party to agree to a proposal or require the making of a concession.' 43 P.S. § 1101.701.

Additionally, as the Commonwealth Court held in PLRB v. Eastern Lancaster County Education Association, 427 A.2d 305 (Pa. Cmwlth. 1981), employe organizations have the right to govern their internal affairs without interference, and such internal union matters include the necessity and the procedures for ratification of a collective bargaining agreement. As stated by the court, the union membership could 'either give to or withhold from the membership the right to ratify collective agreements by popular vote' by adopting provisions in the union's constitution or by-laws. Id. at 308 (citing Houchens Market of Elizabethtown, Inc. v. NLRB, 375 F.2d 208 (6th Cir. 1967)). Moreover, an employe organization does not have the obligation to submit proposed agreements to which it has not assented to its membership for ratification or rejection. Cleveland Orchestra Committee v. Cleveland Federation of Musicians, 303 F.2d 229 (6th Cir. 1962); Branch v. Vickers, Inc., 209 F. Supp. 518 (E.D. Mich. 1962). Therefore, the Union was not required to submit the Employer's contract proposal to a ratification vote of its members, and the Secretary did not err in dismissing the Employer's Charge under Section 1201(b)(3) of PERA."

38 PPER at 374. Thus, there is no basis for finding that the Association did not bargain in good faith in any event.

#### CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the PERA.
2. The Association is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The District has committed an unfair practice under section 1201(a)(5) of the PERA.
5. The District has not committed an unfair practice under section 1201(a)(9) of the PERA.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing 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 an appropriate 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 PERA:
  - (a) Rescind the contract with STA and reinstate the work of providing transportation services to the bargaining unit;
  - (b) Offer in writing to any employe who lost work as the result of its contract with STA unconditional reinstatement to their former position without prejudice to any rights or privileges enjoyed by them;

(c) Make whole any employe who sustained a loss of pay and/or benefits as the result of its contract with STA;

(d) Pay interest at the simple rate of six percent per annum on any back pay due from the date the employe sustained a loss of pay as the result of its contract with STA to the date they are offered unconditional reinstatement to their former position;

(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 the employe normally would have earned for each quarter or portion thereof earnings which the employe actually earned or with the exercise of due diligence would have earned in other employment, earnings the employe would have lost through sickness and any unemployment compensation received by the employe. 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 twenty-ninth day of January 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

WILLIAMSPORT AREA SUPPORT PERSONNEL ASSOCIATION :  
:   
v. : Case No. PERA-C-09-219-E  
:   
WILLIAMSPORT AREA SCHOOL DISTRICT :

**AFFIDAVIT OF COMPLIANCE**

The District hereby certifies that it has ceased and desisted from its violation of section 1201(a)(5) of the PERA, that it has rescinded its contract with STA and reinstated the work of providing transportation services to the bargaining unit, that it has offered in writing to any employe who lost work as the result of its contract with STA unconditional reinstatement to their former position without prejudice to any rights or privileges enjoyed by them, that it has made whole any employe who sustained a loss of pay and/or benefits as the result of its contract with STA, that it has paid any back pay due with interest as directed, that it has posted the proposed decision and order as directed and that it has served a copy of this affidavit on the Association.

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

\_\_\_\_\_  
Title

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

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