COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LACKAWANNA TRAIL EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION	:	
v.	:	Case No. PERA-C-09-360-E
LACKAWANNA TRAIL SCHOOL DISTRICT	:	

FINAL ORDER

The Lackawanna Trail Educational Support Personnel Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on December 24, 2009. The Association's exceptions challenge a December 8, 2009 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Lackawanna Trail School District (District).

The Association alleged in its Charge that the District violated Section 1201(a)(1) and (5) of PERA by changing the schedule of bargaining unit member Judy Phelps from 7:30 a.m. to 12:15 p.m. to 6:30 a.m. to 11:45 a.m. and refusing to bargain over the change or its impact upon her wages, hours and working conditions. In response to an October 19, 2009 letter from the Secretary seeking additional specifications, the Association amended the Charge to allege that no provision in the parties' collective bargaining agreement establishes a set schedule for Ms. Phelps and that the District changed her schedule in order to assign her the new duty of calling substitute teachers.

The Secretary declined to issue a complaint, stating that the District's assignment of duties is a managerial prerogative that is not subject to bargaining, citing Joint Bargaining Committee of the Pennsylvania Social Services Union v. PLRB, 503 Pa. 236, 469 A.2d 150 (1983), Lincoln University Chapter of the American Association of University Professors v. Lincoln University, 38 PPER 137 (Final Order, 2007) and Bangor Area Education Association v. Bangor Area School District, 33 PPER ¶ 33088 (Final Order, 2002). The Secretary further indicated that the Association failed to set forth sufficient facts to show that the District's actions had a severable impact on wages, hours or working conditions. Because the Association failed to state causes of action under Section 1201(a)(1) and (5) of PERA, the Secretary dismissed the Charge.

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

In its exceptions, the Association alleges that its Charge establishes a severable change in wages, hours and working conditions because the District changed the schedule of a single employe, rather than making a bargaining unit-wide change. The law is well established that the determination of the workload and the assignment of duties to a public employe falls within the public employer's managerial prerogative under Section 702 of PERA. Joint Bargaining Committee, supra; Lincoln University; supra; Bangor Area School District, supra. Where a public employer is charged with violating its duty to bargain over the impact of implementation of a managerial prerogative, the employe representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable, severable impact on wages, hours or working conditions as a result of implementation of the managerial prerogative; (3) the employe representative made a demand to bargain over the demonstrable impact; and (4) the

employer refused the employe representative's demand to bargain. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000).

The Association alleged in its Charge that Ms. Phelps' schedule was changed due to the District's decision to assign her the new duty of calling substitute teachers. Therefore, the change in her schedule was a direct and necessary consequence of the District's decision to assign Ms. Phelps additional duties. Indeed, requiring the District to bargain over the impact of its decision on Ms. Phelps' schedule would essentially allow the Association to bargain over the District's managerial decision to assign a new duty to her. As such, the Association has failed to demonstrate that the District's decision to assign a new duty to Ms. Phelps has a severable impact on her wages, hours or working conditions.

The Association further alleges that the District violated Section 1201(a)(5) of PERA by unilaterally changing its past practice of scheduling Ms. Phelps to work from 7:30 a.m. to 12:15 p.m. A unilateral change in an established past practice constitutes an unfair practice under Section 1201(a)(5) if it pertains to a mandatory subject of bargaining. AFSCME District Council 88, Local No. 790 v. Reading School District, 35 PPER 111 (Final Order, 2004). The Association's argument fails because a public employer does not have a duty to bargain over its managerial decision to direct a single employe to perform or cease performing work. Brandywine Heights Education Association v. Brandywine Heights School District, 29 PPER ¶ 29232 (Final Order, 1998).

The Association finally asserts that the present case is similar to the facts in Minersville Area Educational Support Personnel Association v. Minersville Area School District, 40 PPER 112 (Proposed Decision and Order, 2009)[1]. In Minersville, the public employer unilaterally issued a bargaining unit-wide weekend coverage schedule and eliminated the parties' past practice of allowing the second shift employes to work first shift during school vacation periods. That is not the case here, where the District assigned a new duty to a single employe (Ms. Phelps), causing a change in her work schedule to allow her to perform that duty. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Lackawanna Trail Educational Support Personnel Association are dismissed and the Secretary's December 8, 2009 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this twentieth day of April, 2010. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

[1] In a Final Order issued on March 16, 2010, the Board affirmed the Proposed Decision and Order of the Hearing Examiner finding a violation of Section 1201(a)(1) and (5) of PERA and dismissed the exceptions filed by Minersville Area School District.