

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE, :
COUNTY AND MUNICIPAL EMPLOYES, :
DISTRICT COUNCIL 86 :
 : Case No. PERA-C-09-319-E
v. :
 :
SHAMOKIN AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On August 7, 2009, the American Federation of State, County and Municipal Employes, District Council 86 (Complainant or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Shamokin Area School District (Respondent or District), alleging that the District violated Sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).¹

On August 29, 2009, 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 resolving the matters in dispute through the mutual agreement of the parties and November 12, 2009, in Harrisburg was scheduled as the time and place of hearing if necessary.

A hearing was necessary, at which time the parties 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. The parties stipulated and agreed that Shamokin Area School District is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA), 43 P.S. § 1101.301(1). (N.T. 8)

2. The parties stipulated and agreed that the American Federation of State, County and Municipal Employes, District Council 86, is an employe organization within the meaning of Section 301(3) of PERA, 43 P.S. 1101.301(3) (N.T. 8-9)

3. That the Union is the exclusive certified bargaining representative of the "employes in a subdivision of the employer unit comprised of teacher aides, all cafeteria employes, custodians, maintenance and secretaries, and excluding supervisors, first level supervisors, and confidential employes as defined in the Act." PLRB Certification of Representative, PERA-R-1436-C. (Board Exhibit 1)

4. That the District employed June Tetkoskie in the position of secretary, administration office-fiscal affairs, for 33 years until her retirement in 2009. (N.T. 11, 12, Complainant's Exhibit 2)

5. That Ms. Tetkoskie worked for Business Manager Stephen Curran. (N.T. 25-26)

6. That Ms. Tetkoskie performed her secretarial duties under a job description that was in place since 1971 ("Office Secretary") and revised in 2007 ("Secretary"). (N.T. 14, 15, 25 Complainant Exhibits 3 and 4)

7. That Ms. Tetkoskie was not computer literate and was not able to use a computer to use the District's software applications for personnel, payroll, fund accounting and budget. (N.T. 31)

¹ At the hearing, the Union withdrew its allegations that the District violated Sections 1201(a)(2) and (9) of PERA.

8. That the May 12, 2009, the District adopted a job description for the new position of fiscal technician. (N.T. 21-22, Complainant Exhibit 5)

9. The District unilaterally classified the position of fiscal technician as a confidential position and a non-bargaining unit position. (N.T. 26)

10. That on June 16, 2009, the Board of Directors of the School District appointed Jessica Portzline to the position of fiscal technician. (N.T. 16-17, Complainant Exhibit 6, page 23, item 7.12)

11. That the District did not bargain with the Union before it established the position of fiscal technician and hired Ms. Portzline. (N.T. 18)

DISCUSSION

The complainant's charge of unfair practices alleges that the District unilaterally transferred bargaining unit duties to a new position of fiscal technician, business administration office. The charge alleges that "this same position was previously classified as a clerk/secretary within the bargaining unit. This work has historically been performed by a bargaining unit member." At the hearing, the Union argued that this was work that had been performed by June Tetkoskie, a secretary in fiscal affairs, a bargaining unit member, at the time of her retirement in 2009.

In order to remedy this violation of PERA, the union requests that the Board order the position to be reposted for bargaining unit members to apply for the position.

A public employer commits an unfair practice in violation of Sections 1201(a)(1) and (5) of PERA when it unilaterally transfers bargaining unit work outside the bargaining unit. Pennsylvania Labor Relations Board v. Mars Area School District, 480 Pa. 285, 389 A. 2d 1073 (1978). Such a change is actionable when "any" bargaining unit work is so transferred PLRB v. City of Harrisburg, 605 A.2d 440, 442 (Pa. Cmwlth. 1992)(emphasis in original). The Board has not adopted a de minimis standard for a defense. City of Philadelphia, 25 PPER ¶ 25034 (Final Order, 1994).

The District raises two defenses to the charge. First, the District argues that the complainant did not meet its burden of proving that bargaining unit work was transferred. Second, the District argues that the District's decision was not subject to bargaining because it was matter of inherent managerial policy under Section 702 of PERA, specifically standards of service, the organizational structure and the selection and direction of personnel. After Ms. Tetkoskie retired, the District created a new position that did duties Ms. Tetkoskie was not able to do because of her lack of computer skills.

The burden of proving a charge of unfair practices is on the complainant to show by substantial and legally credible evidence that it has proven each of the elements of the charge. St. Joseph's Hospital v. PLRB, 473 PA. 101, 373 A.2d 1069 (1977).

The Association must first prove that bargaining unit work performed by Jean Tetkoskie has been transferred. It is unclear from the record what work of Ms. Tetkoskie's was transferred to the new position. The Association did not call Ms. Tetkoskie as a witness, nor did it call any other employe to testify what her work duties were. Instead, the Association introduced a job description that Ms. Tetkoskie worked under at the end of her career.

The job description is for the position called "No. 504.24 Secretary." The job description has seven sections: "Qualifications", "Reports To," "Supervises," "Position Requirements," "Terms of Employment," "Evaluation," and "Adoption [date of Board approval]." However, nowhere in the job description is there a listing of job duties, which makes this exhibit less than probative of the issue of what work Ms. Tetkoskie was doing. Therefore, the union has not proven the first element of the charge because we do not know what duties were transferred outside the bargaining unit.

The District's second defense is that its creation of a new position with a different set of skills and qualifications than the retiring employe had possessed was a policy decision under Section 702 of PERA and not subject to bargaining. The District's defense has merit, given the unit description.

The Board addressed this same question in Penns Manor Area School District, 30 PPER ¶ 30198 (Final Order, 1999), where the Board dismissed the Association's argument that the District could not unilaterally exclude a position from the bargaining unit without first submitting a unit clarification petition to the Board for the position. The Board, in agreeing with the District, stated,

Finally, the District argues that the hearing examiner erred in concluding that the AEC [alternative Education Counselors] is within the description of the bargaining unit as certified by the Board. The Board has found that "where an employer creates a position that is clearly within the broad description of the bargaining unit as certified by the Board . . . the employer commits an unfair practice by unilaterally declaring the position excluded from the bargaining unit." Beaver County Community College, 23 PPER ¶ 23070 (1992) aff'd 24 PPER ¶ 24110 (Court of Common Pleas, Beaver County, 1993)(emphasis added). However, in 1970, when the Board certified this bargaining unit, the unit consisted of "teachers, school counselors, school nurse, and librarian." This description of the unit was not "broad" as contemplated by the Board in Beaver County Community College, and did not include alternative education coordinators. Therefore, the District did not commit an unfair labor practice prior to the disposition of its unit clarification petition by creating the position of the AEC, as a non-bargaining unit position. It cannot fairly be stated that the unit as described in 1970 encompassed the position of the AEC at the time of its creation in 1997.

Since the 1970's, the Board has more broadly described bargaining units in part to address the problems associated with the evolution of units. The broad description allows employers to add, delete, and modify positions within a broadly described bargaining unit (e.g. "all professional employees"). Under this policy of unit description, professional units are more broadly described to include all full-time and regular part-time professional employes, including but not limited to specific classes of professionals. "The Board broadly defines bargaining units . . . to obviate the need for the filing of numerous petitions for unit clarification for the Board to make a determination on each new position created or existing classification retitled." Beaver County Community College, supra.

Penns Manor Area School District, supra. at p. 431.

In the present case, the allegation concerns a non-professional position, but the same principle applies. In this case, the parties are still operating under a 1971 unit certification that is not a broad non-professional unit, but one that lists distinct classifications. Given this unit description and Penns Manor Area School District, supra, the District was within its managerial rights to unilaterally establish this new non-professional position outside the bargaining unit without first filing a unit clarification petition. There will be no finding of a violation of the duty to bargain.

CONCLUSIONS

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

1. That Shamokin Area School District is a public employer within the meaning of Section 301(1) of PERA.
2. That the American Federation of State, County and Municipal Employes, District Council 86 is an employe organization within the meaning of Section 301(3) of PERA.

3. That the Board has jurisdiction over the parties hereto.

4. That the District has not committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint rescinded.

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 thirtieth day of June, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner