COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ABINGTON HEIGHTS EDUCATION ASSOCIATION	:	
	:	
	:	
v.	:	CASE NO. PERA-C-11-435-E
	:	
	:	
ABINGTON HEIGHTS SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On December 22, 2011, the Abington Heights Education Association (Union)filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Abington Heights School District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). In its specification of charges, the Union alleged that, on or about September 1, 2011, the District unilaterally removed the bargaining unit work of teaching and evaluating students in world languages when it provided Latin instruction through an online company called Lincoln Interactive.

On January 20, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on June 4, 2012, in Harrisburg. At the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both the District and the Union submitted 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. (N.T. 16-17).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 16-17).

3. Dr. Michael Mahon is the Superintendent of the District. (N.T. 57).

4. Teachers in the bargaining unit instruct, evaluate, test, assess and supervise students. (N.T. 22).

5. Teachers give oral and written evaluations of students after instruction to determine students' progress. Evaluations are accomplished by administering exams. (N.T. 22).

6. Each teacher in the bargaining unit grades every test that they administer to students. (N.T. 22-23).

7. No one other than bargaining unit teachers instructs and teaches students. The bargaining unit covers all teachers who perform any kind of teaching or instructional work for the District regardless of the subject matter or course material taught and presented. (N.T. 21-23; Association Exhibit 1, Joint Exhibit 1).

8. Marcelle Genovese is an eighth grade math teacher, and she is the Union President. (N.T. 17).

9. Joint Exhibit one is the unappealed proposed decision and order issued by Hearing Examiner Thomas P. Leonard, Esquire, ("Leonard Order") sustaining

a different charge of unfair practices involving the same parties at Case No. PERA-C-10-393-E. (Joint Exhibit 1).

10. Ms. Genovese adopted Finding of Fact Number 5 of the Leonard Order and credibly testified to its accuracy. That finding provides as follows:

> 5. Teachers in the Association's bargaining unit perform all work related to the education, instruction, and teaching of the District's students, including presentation of academic material, impartment of knowledge and concepts, evaluation of academic progress, assessment of student performance (grading), counseling, and providing any other guidance or support necessary to ensure academic success. (N.T. 17-19, 26).

(Joint Exhibit 1, F.F. 5 @ 2).

11. In the past, the District hired a replacement teacher into the bargaining unit to fill a vacancy left by a retiring teacher. The District has not replaced retired teachers with online courses, until Latin II during the 2011-2012 school year. (N.T. 24-25).

12. The District offers world languages as part of its curriculum. (N.T. 25).

13. All the languages contained in the curriculum planning guide, except for Mandarin Chinese, were taught by bargaining unit teachers. Hearing Examiner Leonard concluded that the teaching of Mandarin Chinese by a non-unit instructor was an unfair practice. (N.T. 24, 26-27, 30; Joint Exhibit 1; Association Exhibit 2).

14. The instruction of all courses contained in the curriculum planning guide is and exclusively has been bargaining unit work. Ms. Genovese adopted Finding of Fact Number 8 from the Order as accurate. That finding provides as follows:

> 8. The courses that appear in the District's "High School Curriculum Planning Guide" have always been taught, exclusively, by the Association's bargaining unit members. (N.T. 25, 139; Association Exhibit 3).

(N.T. 27; Joint Exhibit 1, F.F. 8 @ 2).

15. Marianne Bundy was the bargaining unit teacher who taught Latin in the District's world languages department. She taught six Latin classes. All teachers in the District's world languages department are bargaining unit members. (N.T. 29-32; Association Exhibits 3 & 4).

16. Ms. Genovese adopted as accurate Finding of Fact Number 9 in the Leonard Order. That finding provides as follows:

> The courses that appear on the District's high school and middle school class schedules have always been taught, exclusively, by bargaining unit members. (N.T. 29-30, 34-35; Association Exhibits 4 and 5).

(N.T. 31; Joint Exhibit 1, F.F. 9 @2).

17. Ms. Bundy revealed her intent to retire May 1, 2010. The District became certain of her retirement on April 1, 2011, and she retired at the end of the 2010-2011 school year. When she retired, there were no Latin teachers remaining in the bargaining unit. (N.T. 31-32, 59-60).

18. At a school board discussion, Ms. Genovese learned that the District contemplated discontinuing the Latin program. During that discussion, Dr. Mahon stated that the District was considering an online Latin course for $700 per student. (N.T. 33-34, 60-61).

19. Lincoln Interactive is the private online Latin course company that the District used to teach Latin to students after Ms. Bundy retired. (N.T. 34, 62; Association Exhibits 7, 8 & 9).

20. Prior to the 2011-2012 school year, the District used Lincoln Interactive for homebound students and SAT preparation only. Ms. Genovese adopted Finding of Fact Number 56 of the Leonard Order as accurate. That finding provides as follows:

> 56. More recently, the District has provided instruction to "homebound" students through an on-line company called "Lincoln Interactive." The Association did not object to the on-line instruction because the underlying service (education of homebound students) has never been bargaining unit work, has never been covered by the Association's Collective Bargaining Agreement, and the on-line services are not counted toward high school credit. (N.T. 138-139, 146).

(N.T. 34-35; Joint Exhibit 1, F.F. 56 @6).

21. Prior to the 2011-2012 school year, the District did not at any time use an online company to provide any classes historically and exclusively taught by bargaining unit members that appeared in the curriculum guide or class schedules at the high school or middle school. (N.T. 35).

22. On October 3, 2011, Dr. Mahon informed the Union, via e-mail, that seven students were enrolled in Latin online, which the District was providing through Lincoln Interactive and not with a bargaining unit member. The Latin courses provided to District students through Lincoln Interactive were provided for the entire 2011-2012 school year. (N.T. 43-48, 49-50, 54, 59-60; Association Exhibits 7 & 8).

23. The District did not post the vacant Latin teacher position nor did it attempt to hire a replacement teacher for Ms. Bundy prior to using online services. (N.T. 55-56).

24. At a later time, the Union learned that the online course in Latin would be listed on enrolled students' transcripts. Students received no credit towards graduation for Latin courses provided by Lincoln Interactive. (N.T. 46-47, 62-63).

25. Employes of Lincoln Interactive online were performing the instructing, grading, assessing and teaching of Latin to District students. The teachers/facilitators at Lincoln are not bargaining unit employes of the District; they are employes of Lincoln. (N.T. 48, 51; Association Exhibit 9 @2).

26. The Union did not at any time agree or consent to the use of Lincoln Interactive. After the Union objected to the use of online services for Latin, Dr. Mahon did not at any time discuss the matter with the Union. (N.T. 49, 54).

27. The Lincoln Interactive website provides, in relevant part, as follows:

> Lincoln interactive students are able to communicate online with their teacher facilitators to ask questions, submit assignments, and receive feedback and grades. Our students also have the ability to connect with other students through email, discussion boards, and social networking.

(Association Exhibit 9 @ 2).

28. The Lincoln Interactive website also provides, in relevant part, as follows:

> The teacher facilitator evaluates student assignments and tests, answers questions via e-mail and discussion board, and provides support to ensure student success.

(Association Exhibit 9 @4).

29. The Lincoln Interactive website also provides, in relevant part, as follows:

> A final exam is included at the end of the course. Each course includes objectives, reinforcement, and enrichment activities. Many lessons include web casts and interactive activities designed to enhance learning.

(Association Exhibit 9 @5).

30. The activities described above have historically constituted bargaining unit work. (N.T. 51-53).

DISCUSSION

The Union argues that the District unlawfully diverted bargaining unit work when it used non-bargaining unit employees from Lincoln Interactive to educate and evaluate Latin students. (Union's Post-hearing Brief at 9). The Union contends that, in **Tredyffrin-Easttown Educ. Ass'n v. Tredyffrin-Easttown School District**, 43 PPER 11 (Final Order, 2011), the Board held that a change to online classes, where, as here, an online teacher not employed by the district instructs students and assesses their work, constitutes the unlawful diversion of bargaining unit work. (Union's Post-hearing Brief 9-12). The Union further maintains that the **Tredyffrin** Board "took a very broad view of bargaining unit work in the educational arena" in that "[a]ny instructional service—regardless of class content or the method of delivering instruction—is covered." (Union's Post-hearing Brief at 11).

The Union, moreover, emphasizes that the **Tredyffrin** Board rejected the defense that online courses constitute the introduction of new technology, which is a managerial prerogative under PERA. (Union's Post-hearing Brief at 11-12). The Union further asserts that, in **Tredyffrin**, the Board analyzed the online courses under the essential function test and examined whether the technology completely displaced the work performed by unit members or whether the technology merely enhanced or altered the delivery of services, where personnel performed the same essential functions. (Union's Post-hearing Brief at 12-13). The Union also argues that there is no history or past practice of diverting bargaining unit work of teaching courses that are part of the District's curriculum. (Union's Post-hearing Brief t 17-21).

The District defends the Union's claims by asserting that, due to low enrollment and financial constraints, it "went out of the business of teaching Latin." (District's Post-hearing Brief at 1). However, as an accommodation, the District contracted with Lincoln Interactive as a "one-time courtesy to seven individuals who had completed one year of this foreign language and sought to take another." (District's Post-hearing Brief at 2). "Latin II online was to be taken outside of school hours, without school computers, for no graduation credit, would have no affect on GPA, and would only appear in the additional comments section of the transcript rather than in the section with high school classes and grades." (District's Post-hearing Brief at 2).

The District further argues that the online Latin II course at issue does not constitute bargaining unit work because "[n]o bargaining unit member has ever taught an afterschool, online course for no credit, that has no bearing on GPA, in the history of the district." (District's Post-hearing Brief at 2). Latin II was not part of the District's curriculum and the District has no interest in its content or grading system. (District's Post-hearing Brief at 3).

The District moreover maintains that, in the past, it eliminated woodshop and had that course taught at the Vo-Tech by Vo-Tech teachers who are not in the bargaining unit. The District argues that "[s]tudents were allowed to go to the Vo-Tech to take the course. The District paid the Vo-Tech, just like it pays Lincoln Interactive, to teach a group of students off-site in a subject that used to be offered by bargaining unit members at Abington Heights." (District's Post-hearing Brief at 3-4). Assuming that Latin II is bargaining unit work, the District asserts that it "has not altered the manner in

which it moves the work under these circumstances. The Association has accepted and never challenged this method of offering classes [through a non-District provider] where the District would not otherwise offer them." (District's Post-hearing Brief at 4).

In **Tredyffrin**, Latin I and II, German I and Visual Basic were historically and exclusively taught by bargaining unit members. The tests, quizzes and grades for these courses were given by bargaining unit members. Upon implementing an online program, these courses were then taught and graded by instructors who were not members of the bargaining unit. Grades for the online courses did not appear on students' report cards, but the grades were counted toward minimum credit requirements.

The legal principles and analyses contained in the Board's **Tredyffrin** decision are controlling and therefore worth reciting here, as follows:

> With respect to the remainder of the District's exceptions, it is undisputed that the transfer of bargaining unit work is a mandatory subject of bargaining. **PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978).** Indeed, the Board and the Commonwealth Court have repeatedly recognized that under the balancing test of **PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975),** the interest of the bargaining unit members in retaining their work outweighs the employer' s interest in using a contractor or other non-bargaining unit persons to perform the work. **Commonwealth v. PLRB, 568 A.2d 730 (Pa. Cmwlth. 1990).** Because of the employes' substantial interest in retaining their work, the fact that members of the bargaining unit are not furloughed or terminated does not relieve the employer of its statutory obligation to bargain the transfer of the employes' duties to others who are not in the bargaining unit. **Id.; Cocalico Area Education Association v. Cocalico Area School District**, 35 PPER 118 (Proposed Decision and Order, 2004). Thus, the Board and the courts have held that the transfer of any bargaining unit work to non-members, without first having bargained with the employe representative, is an unfair practice. **City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992); City of Jeanette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006); Lake Lehman Educational Support Personnel Association v. Lake Lehman School District**, 37 PPER 56 (Final Order, 2006).
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> A removal of bargaining unit work may take one of two forms. As the Board and the Commonwealth Court have recognized:
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> > "An unfair labor practice occurs when an employer unilaterally removes work that is exclusively performed by the bargaining unit without prior bargaining with the union ... . An employer also commits an unfair labor practice when it alters a past practice related to assignment of bargaining unit work to non-unit members or varies the extent to which members and non-members of the unit have performed the same work."
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> **City of Jeannette, 890 A.2d at 1159 [citing, AFSCME, Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992)].** Not only does an employer commit an unfair practice by transferring work that had previously been performed exclusively by bargaining unit employes, but even where the service has previously been jointly performed by both bargaining unit and non-bargaining unit employes, the employer cannot unilaterally decide to continue to perform the service exclusively with non-bargaining unit employes, without first fulfilling its collective bargaining obligation. **AFSCME, Council 13, *supra*; Wyoming Valley West Educational Support Personnel Association v. Wyoming Valley West School District**, 32 PPER ¶ 32008 (Final Order, 2000); **Woodland Hills Educational Support Personnel Association v. Woodland Hills School District**, 40 PPER 135 (Final Order, 2009).
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> The Board has consistently held that an employer is not excused from its obligation to bargain the assignment of the work out of the unit merely

by changing the manner in which the work is to be performed. **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia**, 41 PPER 163 (Final Order, 2010). This is so even when the change involves the introduction of new technology, or would require additional training. **Pennsylvania State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006); City of Philadelphia, supra; Fraternal Order of Police, Reading Lodge No. 9 v. City of Reading**, 41 PPER 4 (Final Order, 2010); **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia**, 27 PPER ¶ 27161 (Final Order, 1996).

Tredyffrin, 43 PPER at 37-38. Specifically, the Board, in **Tredyffrin**, rejected the arguments made by the District here regarding the teaching of courses and concluded as follows:

> Contrary to the District's contention, the bargaining unit work is not the specific course taught, but the teaching and assessment of students in whatever courses are offered by the District. A change in subject matter or introduction of different courses does not justify a unilateral removal of that work from the bargaining unit. Even if the District's current professional employes were not certified in a newly-offered subject matter, the fact that a new bargaining unit employe may need to be hired or a current employe may need to be trained to teach the course, does not justify the District' s removal of the work of teaching the students from the bargaining unit. **Pennsylvania State Police, supra**. Similarly, the claim that the District would not otherwise offer the courses provided through the E-Learning Program does not eliminate its obligation to bargain over use of non-bargaining unit personnel to teach the students if those courses are offered. Indeed, under the District's theory, the District could unilaterally eliminate the entire bargaining unit by using these claims to systematically transfer work out of the unit. See, **Commonwealth**, 568 A.2d at 733.
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> It is clearly a managerial prerogative of a school district to decide what courses to offer, but it is equally clear that the District must bargain with its teachers before assigning the work of teaching students in those classes to personnel outside of the bargaining unit. Accordingly, even assuming that the E-Learning Program courses may be different from those currently taught in the classroom, or would not be offered for classroom instruction, these alleged facts would not change the outcome because the District has a statutory obligation to bargain the removal of the work of teaching the District's students from the bargaining unit.
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> The District also argues on exceptions that the teaching of online courses was never bargaining unit work. In a similar argument, the District asserts that it has the managerial prerogative to introduce the new technology of online courses and assign corresponding duties to bargaining unit and non-bargaining unit personnel. The Board has previously addressed the competing interests between the introduction of technology and the removal of bargaining unit work raised by the District' s exceptions. Specifically, in **City of Philadelphia**, the Board stated as follows:
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>> "The Board readily agrees that the introduction of new technology is generally a matter of managerial prerogative. The issue is obviously not whether the Employer can introduce advanced technology in the workplace, but who will perform the duties associated with the essential function and goals, which have not changed. As noted by the hearing examiner ... the Employer' s decision to enhance security did not necessitate the removal of the work from the police bargaining unit. Thus, even if the introduction of more advanced technology did concern a managerial prerogative it was not this decision which produced the impact of the loss of work on the bargaining unit. The bargaining unit was affected when the Employer made the additional decision to remove the work from the bargaining unit."

> **City of Philadelphia**, 27 PPER at 369. Indeed, where the essential function of a bargaining unit job has not been eliminated through automation, the assignment of non-bargaining unit personnel to perform work through the use of new technology that is substantially equivalent to work previously performed by the bargaining unit member is a mandatory subject of bargaining. **Fraternal Order of Police Lodge #5 v. City of Philadelphia**, 31 PPER ¶ 31022 (Final Order, 1999).
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> With respect to the contention that the work at issue is teaching online courses, the District confuses the essential functions of the bargaining unit work, which is to teach and assess students, with the manner of performing that job, whether it is done online or in the classroom. Indeed, this case is very similar to a municipality' s introduction of video surveillance cameras to monitor for criminal activity. In **City of Reading, supra** and **City of Philadelphia, supra**, the employer, as the District here, argued that the introduction of new technology (video surveillance cameras) was a managerial prerogative, and that the police officer bargaining unit employes had not previously performed the work of monitoring the video cameras. The Board recognized in those cases that the work at issue was not monitoring the cameras, but rather monitoring public areas for criminal activity, which had been the work of the police officers. The introduction of the video surveillance cameras enhanced, but did not eliminate, this essential function of the police officers. The Board therefore held that the employer unlawfully assigned the work of monitoring for criminal activity, via video surveillance, to non-bargaining unit employes without bargaining with the police officers' representative.
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> Here, the introduction of E-Learning online courses did not eliminate the essential function of the District's bargaining unit professional employes, which is teaching and assessing students. The duties of teaching the students and assessing their progress is now done by a non-bargaining unit instructor and site coordinator, who perform those teaching functions via computers and online resources. As in **City of Reading** and **City of Philadelphia**, the bargaining unit duties of teaching and assessing students have not been eliminated by automation. Therefore, the District is not excused from its statutory obligation to bargain over the removal of the bargaining unit work.

Tredyffrin, 43 PPER at 37-39.

In this case, the corroborated and unrebutted evidence of record amply shows that the bargaining unit teachers perform all the functions of teaching, assessing grading and presenting course materials at the District for new classes, old classes, and for classes where teachers retire. Latin II was bargaining unit work for many years before Ms. Bundy retired, and the District had an obligation to negotiate the removal of Latin II before subcontracting it away to Lincoln Interactive. Contrary to the District’s defense, that it went out of the business of teaching Latin, the facts of record do not support that argument. The record shows that, although the District planned on eliminating Latin, it certainly made Latin II available to students through Lincoln Interactive during the 2011-2012 school year by paying Lincoln $700 per student. Although students were not provided a grade, credit toward graduation or use of District facilities during the school day to take Lincoln Interactive Latin II, the fact remains that students were taking the classes, formerly taught by a bargaining unit member, but taught and graded by non-bargaining unit instructors. The salient point of fact is that the District **paid** for the students to take Latin II somewhere else. Furthermore, the District concedes that it did not go out of the business of teaching Latin during the 2011-2012 school year when it argues in its post-hearing brief that it provided a “one-time courtesy to seven individuals who had completed one year of this foreign language and sought to take another.” (District’s Post-hearing Brief at 2).

Moreover, the emergency exception is not applicable on this record. In **Nazareth Borough Police Association v. Nazareth Borough**, 40 PPER 51 (Final Order, 2009), the Board held as follows:

> An exigent circumstance may serve as a defense to a failure to bargain charge, but only where the employer establishes that it has made reasonable efforts to avert the situation, and where it is proven that compliance with the collective bargaining agreement, interest arbitration award, or collective bargaining obligations, would be impossible and cause the employer to be unable to timely perform an essential public function. **Mifflin County Educational Support Personnel Association ESPA/PSEA/NEA v. Mifflin County School District**, 38 PPER 37 (Final Order, 2007) (school district established exigent circumstances where the district was required by law to have a sign language interpreter by the start of the school year, but after failed attempts to fill the position through the contractual bidding process, and reasonable efforts to hire an interpreter at the contractual rate of pay, the district was constrained to accept the wage demands of a qualified interpreter in time for the start of school year); **City of Jeannette, *supra*** (the employer was not excused from removal of bargaining unit work under the claim of exigent circumstances where the city did not first offer bargaining unit employes the ability to work a vacant shift consistent with past practice).

Nazareth Borough, 40 PPER at 212. Ms. Bundy revealed her intent to retire May 1, 2010. The District became certain of her retirement on April 1, 2011, and she retired at the end of the 2010-2011 school year. When she retired, there were no Latin teachers remaining in the bargaining unit. The District did not post the vacant Latin teacher position nor did it attempt to locate or hire a replacement teacher for Ms. Bundy during the five months between April 1, 2011 and September 1, 2011, prior to using online services. At a minimum, the District did not establish that it made **any** effort, let alone any reasonable effort, as required by **Nazareth**, **supra**, to replace Ms. Bundy with a bargaining unit member.

The **Tredyffrin** case also expressly rejected the District’s contention that the online course was never bargaining unit work. The **Tredyffrin** Board reiterated the essential functions test repeatedly applied to removal cases where the specific job duties change as a result of new technology but the essential functions of the job or the service remain the same. The essential function of the online Latin II course was the teaching and assessing of Latin II, which has historically and exclusively been performed by members of the bargaining unit. The fact, as emphasized by the District, that no bargaining unit member ever taught a course “where the District had no input in the content or assessment and no credit of any sort was given in the official transcript,” does not change the result. The District is attempting to take a snapshot of bargaining unit work that is much more narrow and focused than the dictates of **Tredyffrin**. The **Tredyffrin** Board broadly and purposefully stated that “[c]ontrary to the District' s contention, the bargaining unit work is not the specific course taught, but the teaching and assessment of students in whatever courses are offered by the District **Tredyffrin**, 43 PPER at 38. It matters not whether the District’s employment of new technology through Lincoln altered the specific job duties or the manner of providing that course or whether the District provided school credit and facilities. The determinative factor is that the District continued to fund the provision of Latin instruction where the essential function of teaching and assessing students in Latin remained the same as it had for many years.

The District’s argument that the Union has accepted the manner of transferring the paid provision of classes to non-bargaining unit teachers must also be rejected. The District cites the one time that it eliminated woodshop and paid the Vo-Tech to provide woodshop to District students. The Union, however, did not acquiesce or agree to any transfer of teaching courses formerly taught at the District by a bargaining unit member simply because it chose not to challenge the transfer of woodshop. The one-time transfer of woodshop to the Vo-Tech does not constitute a waiver prohibiting the Union from challenging the transfer of Latin II classes to a private online service provider.

Tredyffrin, supra (holding that "even if the Association would have previously acquiesced in the District' s use of non-bargaining unit personnel for these duties, as a matter of law, that acquiescence could not constitute a waiver of the Association' s right to bargain the present removal of bargaining unit work occasioned by the E-Learning Program." (citing **Crawford County v. PLRB and AFSCME, D.C. 85, AFL-CIO, 659 A.2d 1078 (Pa. Cmwlth. 1995**))). Also, the woodshop transfer does not establish a past practice of transferring bargaining unit instruction to outside vendors. **Ellwood City Police Wage and Policy Unit v. Ellwood City Borough**, 29 PPER ¶ 29215 Final Order, 1998) (holding that a past practice requires that the parties develop a history of similar responses to a recurring set of circumstances known to both parties on more than one occasion).

Accordingly, the District engaged in unfair practices when it diverted the bargaining unit work of teaching Latin to the private subcontractor, Lincoln Interactive.

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The District **has** committed unfair practices in violation of Section 1201(a)(1) and (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 District shall:

1. Cease and desist from interfering, restraining and coercing employes in the exercise of the rights guaranteed in Article IV of PERA;

2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative;

3. Cease and desist from removing, diverting, transferring and subcontracting bargaining unit work of teaching students at the District;

4. Take the following affirmative action:

   (a) Rescind the contract between the District and Lincoln Interactive for online course instruction to District students;[1]

   (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 the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

[1] It is clear from the record that the District is not offering any Latin courses as of the end of the 2011-2012 school year. Accordingly, I will not order the work restored to the bargaining unit.

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of November, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ABINGTON HEIGHTS EDUCATION ASSOCIATION	:	
	:	
	:	
v.	:	CASE NO. PERA-C-11-435-E
	:	
	:	
ABINGTON HEIGHTS SCHOOL DISTRICT	:	

AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has ceased and desisted from removing, diverting, transferring, subcontracting bargaining unit work of teaching students at the District; that it has rescinded the contract between the District and Lincoln Interactive for the provision of online Latin II instruction; that it has posted a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and furnished 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.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public