# COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

ALLEGHENY VALLEY EDUCATION
ASSOCIATION, PSEA/NEA

:

:

v. : Case No. PERA-C-11-222-E

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ALLEGHENY VALLEY SCHOOL DISTRICT

#### PROPOSED DECISION AND ORDER

On July 22, 2011, the Allegheny Valley Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Allegheny Valley School District (District), alleging that the District violated sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) when it unilaterally transferred "the work of speech and language services to students" that had previously been performed exclusively by a bargaining unit employe.

On August 5, 2011, 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 17, 2011, in Pittsburgh was assigned as the time and place of hearing if necessary.

A hearing was necessary, but was continued to December 7, 2011, on the motion of the Association without objection from the District. The hearing was held on the rescheduled day as well as a second day, May 4, 2012, at which times, all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. Post hearing briefs were submitted on June 11, 2012 and July 2, 2012.

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. Allegheny Valley School District is a public employer within the meaning of section 301(1) of PERA. (N.T. 8)
- 2. Allegheny Valley Education Association, PSEA/NEA is an employe organization within the meaning of section 301(3) of PERA. (N.T. 8)
- 3. On November 23, 1970, the Board certified the Association as the exclusive representative for the purposes of collective bargaining of "a subdivision of the employer unit comprised of teachers, school counselors, home and school visitor, and school nurses." (N.T. 11, 47, Association Exhibit 2)
- 4. Neither the District nor the Association has petitioned to amend the unit description since 1970. (N.T. 11, 47, Association Exhibit 2)
- 5. If a student in the District has any type of speech or language disability, the student receives special education services thorugh a speech and language pathologist.  $(N.T.\ 12)$
- 6. For at least three years prior to the 2007-2008 school year, the District provided speech and language services to identified students through contracted employes from the Allegheny Intermediate Unit. (N.T. 13)

- 7. For the 2007-2008 school year the District began directing its students who needed speech and language therapy to therapists employed by the District. This arrangement continued for three and a half years until 2011. (N.T. 13)
- 8. On March 21, 2011, the District's Board of School Directors approved a recommendation that the District enter into an agreement with River for Speech/Language Services. River began to provide those services on or about April 4, 2011 to the end of the 2010-2011 school year. (N.T. 18, 47, Association Exhibit 3)
- 9. On August 15, 2011, the Board formally approved a proposal from River to again provide speech and language services for the 2011-2012 school year. (N.T. 19, 22, 47, Association Exhibits 4 and 5).

### DISCUSSION

The Association alleges that the District committed unfair practices under sections 1201(a)(1) and (5) of PERA by unilaterally, without bargaining with the Association, making an agreement with River Speech and Educational Services, Inc. to provide speech and language services to students which had previously been done by a member of the Association's bargaining unit.

A public employer violates Section 1201(a)(1) and (5) of PERA when it unilaterally transfers work exclusively performed by bargaining unit members to non-members of the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978). The public employer desiring to transfer bargaining unit work has an "affirmative duty to seek out the representatives of its employes, announce its intentions and provide the employe representative with relevant information necessary for it to fulfill its bargaining obligation." Faculty Fed. of Comm. College of Philadelphia Local 2026, AFT AFL-CIO v. Philadelphia Community College, 25 PPER ¶25172 (Proposed Decision and Order, 1994), citing AFSCME, District Council 89 v. Lancaster County, 24 PPER ¶24054 at 132 (Final Order, 1993)

A party asserting an unfair practice must prove the elements of the alleged violation by substantial and legally credible evidence. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977).

In the present case, there are no factual disputes. In March, 2011, the District entered into an agreement with the River Speech and Educational Services to provide speech and language services to District students. These services had previously been done by a District employe for three years prior to 2011. The Association presented the testimony of four witnesses, each of whom testified in detail about the services provided by the River employee and confirmed that until the agreement with River, speech and language services were provided exclusively by a District employe. The District did not bargain with the Association prior to making the agreement to have the work done by an outside entity.

The District raises several defenses, but its first defense causes the dismissal of the charge. The District argues that the Association has not met its threshold burden of showing that the position at issue, a speech and language therapist, was a bargaining unit position. The District points out that the position of speech and language therapist is not included in the Board's unit description. The certification lists individual positions and not "professional employes." The unit was certified in 1970 and its wording has not changed since that time.

Daniel Swoger, the District's Director of Special Education, in reply to an Association question, answered that the position held by the last District employed speech therapist, Meghan Decker, was a "bargaining unit position" (N.T. 80) However, Mr. Swoger's answer cannot bind the District to inclusion of the position in the certified unit. It is the Board's role to determine position inclusion in a bargaining unit. In the Matter of the Employes of the Housing Authority of Shamokin, 42 PPER 32 (Proposed Order of Unit Clarification and Proposed Order of Amendment of Certification, 2011), citing In

the Matter of the Employes of Chambersburg Area School District, 20 PPER ¶ 20149 (Final Order, 1989).

The Board has never placed the position of speech and language therapist in the bargaining unit or amended the wording of the unit description to make it a unit of "professional employes" into which the position would arguably be included if the Association filed a unit clarification petition. Therefore, I am constrained by the law cited by the District to accept its defense and to dismiss the charge.

#### CONCLUSIONS

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

- 1. The Allegheny Valley School District is a public employer under section 301(1) of PERA.
- 2. The Allegheny Valley Education Association, PSEA/NEA is an employe organization under section 301(3) of PERA.
  - 3. The Board has jurisdiction over the parties hereto.
- 4. 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 PERA the  $\operatorname{Examiner}$ 

#### HEREBY ORDERS AND DIRECTS

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

## IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to  $34 \, \text{Pa}$ . Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirty-first day of August, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner