

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SHALER AREA EDUCATION ASSOCIATION :
PSEA/NEA :
 :
 : CASE NO. PERA-C-10-408-W
v. :
 :
 :
SHALER AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On November 9, 2010, the Shaler Area Education Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Shaler Area School District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the District unilaterally transferred exclusively performed bargaining unit work of social workers to an independent contractor named Glade Run Lutheran Services.

On December 1, 2010, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of April 20, 2011, in Pittsburgh. The matter was continued indefinitely pending settlement negotiations. On January 27, 2012, the Union requested a hearing date because the parties were unable to reach a settlement, and the matter was rescheduled for March 21, 2012. The Union requested a continuance of that hearing and the matter was rescheduled for December 5, 2012. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed 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. 7).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7).
3. The Union does not claim that individual therapy to emotional support students was bargaining unit work. Any individual therapy provided by Glade Run is not bargaining unit work. Mercy Behavioral Health provides individual therapy to students. Social workers do not and cannot provide individual therapy to students. All of the duties performed by Mercy employes that overlap with duties performed by the social workers are an outgrowth of individualized therapy. (N.T. 13, 23, 86-87, 102).
4. The parties stipulated and agreed that the position of home and school visitor, which was included in the bargaining unit by order of the Board Representative on September 21, 2005, at Case No PERA-U-05-343-W, includes the position of social worker. (N.T. 17-18).
5. The parties also stipulated and agreed that the recognition clause of the parties' collective bargaining agreement expressly includes the position of social worker in the bargaining unit. (N.T. 17-18).
6. On July 14, 2010, the District entered a contract with Glade Run Lutheran Services. The Glade Run employe works forty hours per week. The District did not offer to bargain with the Union prior to either entering into the contract with Glade Run or implementing that contract. (N.T. 19, 26, 113; Complainant Exhibit 3).

7. There are four social workers at the District. (N.T. 21).
8. During the 2009-2010 school year, there were two social workers assigned to the High School: Lee Ann Guido and Laurie Cortazzo. The District transferred Ms. Cortazzo to the Elementary School after it contracted with Glade Run. Ms. Guido remained at the High School with one Glade Run employe. Ms. Guido is the only social worker now at the High School. (N.T. 20, 27, 52).
9. The District is a licensed site for Mercy Behavioral Health. Mercy provides individual therapeutic services with licensed therapists for those students identified as requiring individual therapy or psychiatric services and who qualify based on their insurance. Social workers in the bargaining unit do not provide individual therapy and the individual therapy provided by Mercy was never bargaining unit work. (N.T. 22-23, 102, 123).
10. There are two full-time employes of Mercy Behavioral Health at the District. If the student assistance team recommends a mental health evaluation of a student, a liaison from Mercy evaluates the student after parental consent. If the evaluation shows that the student will benefit from individual therapy, the liaison offers Mercy as an option to the parents. If the parents agree, the student is assigned to one of the two therapists at the High School: April Redmond or Ann Giazzoni. Ms. Redmond and Ms. Giazzoni are in the High School when they have appointments with student clients, not on a daily basis, which amounts to approximately two days per week. (N.T. 21-22, 65-67, 102).
11. Social workers do not perform therapy services. The District refers therapy services to outside facilitators. The duties performed by Mercy employes at the District that overlap with the duties of the social workers are incidental to the Mercy employes' role as individual therapists. (N.T. 24, 102-103).
12. The District entered into the contract with Glade Run to provide individual, direct therapy to emotional support students who did not have insurance for Mercy Behavioral Health. (N.T. 119, 123).
13. Lisa DeCarolis is a Glade Run employe who began working at the District, assigned to the High School, at the beginning of the 2010-2011 school year. She provides individual therapeutic services. Social workers do not and are not expected to provide individual therapy. (N.T. 25, 52-53, 55, 122).
14. Laurie Cortazzo is currently an elementary school social worker. Ms. Cortazzo was assigned to the High School for two years prior to her current assignment. (N.T. 30).
15. The student assistance program is a program to which parents, students or teachers may refer a student having academic, emotional or behavioral difficulties. Any student may avail him or herself to that program. (N.T. 33).
16. Social workers at the High School work with all students at the High School: regular education; special education; and emotional support. In May 2010, Ms. Cortazzo became aware that the District intended to bring in Glade Run. Ms. Cortazzo and the other social workers in the District have never provided individual therapy to students at the District. She has provided group therapy at the District. (N.T. 33, 37, 48, 53).
17. Social workers assess behavioral needs of IEP students, including emotional support students. They work with special education teachers and developed IEPs and service claims for students. They also assist in developing 504 plans (plans for students with disabilities such as ADHD, anxiety disorders, diabetes and other mental health disorders). (N.T. 38-39, 43).

18. Both social workers and Ms. DeCarolis provide crisis support to students, including the emotional support students, as part of their regular duties. Ms. Cortazzo has participated in interventions regarding behavioral skills on a regular basis. She also provides student specific consultation to other staff. Crisis support occurs when Ms. Cortazzo is called to a classroom to provide assistance for an out-of-control student. She de-escalates the student either in the classroom or in her office. Mercy employees perform crisis intervention duties if they are in the building at the time and it involves one of their insured clients. (N.T. 39, 41-42, 74-75, 100-101; Complainant Exhibits 4 & 5).
19. Ms. Cortazzo, as a social worker, has contact with students' families, including emotional support students, and has participated in parent education. Social workers coordinate and maintain contact with outside providers and community resources including: police; County Children, Youth and Family; Mental Health/Mental Retardation (MH/MR) centers; the Office of Vocational Rehabilitation; and hospitals. Ms. DeCarolis also coordinates with Children Youth, and Family as well as hospitals for the emotional support students to whom she provides individual therapy. Mercy performs these duties with their clients only. (N.T. 39-40, 59-60, 82, 99-100; Complainant Exhibit 4).
20. Ms. Cortazzo maintains contact with MH/MR centers and health care providers when a student receives counseling outside the District. Ms. Cortazzo would coordinate with them by reporting what she was seeing at the school and by seeking their recommendation. (N.T. 41).
21. Ms. Cortazzo maintains secure records. She has access to ProSoft, a computer program that contains student information such as grades, attendance, disciplinary records and demographic information. (N.T. 42).
22. Ms. Cortazzo assists the psychologist in obtaining family and social history on students, including emotional support students. (N.T. 42-43).
23. Ms. Cortazzo has attended court proceedings for truancy. She helps coordinate special transportation for special education students with District buses and vans as well as contracted buses and vans. She has used her own vehicle for student transportation. Ms. DeCarolis has also used her personal vehicle to effectuate student transportation. (N.T. 45, 63).
24. Ms. Guido performs the same duties as Ms. Cortazzo as a social worker. Because Ms. Guido is assigned mostly at the High School, she observes the job duties performed by Ms. DeCarolis. Ms. Guido, like Ms. Cortazzo, has served and currently serves emotional support students. (N.T. 54-55, 71).
25. Ms. DeCarolis assesses behavioral needs of students as the bargaining unit social workers had always done. Ms. DeCarolis has access to IEPs like the social workers. (N.T. 56).
26. Ms. DeCarolis supports teachers in implementing behavioral support plans as do the social workers. The social workers had always provided crisis support for students including emotional support students. Ms. DeCarolis also performs crisis support for emotional support students. Social workers at the High School had been engaging in one-on-one intervention regarding behavioral skills. Ms. DeCarolis also performs those duties. (N.T. 57).
27. Social workers at the High School consult with other professional staff and provide student specific consultation to students and emotional support students. Ms. DeCarolis also performs those duties with emotional support students. (N.T. 58).

28. Social workers provide clinical consultation and mental health education for teachers for emotional support students. Ms. DeCarolis also performs those duties. (N.T. 58).
29. Social workers' duties include regular family contact and the provision of parent education related to child development strategies. Ms. DeCarolis' also performs those duties. (N.T. 59).
30. The job duties listed in Complainant Exhibit 5 are an accurate description of the job duties actually performed by the social workers. (N.T. 69; Complainant Exhibit 5).
31. Ms. DeCarolis participates in IEP meetings and works with special education teachers regarding IEPs. She schedules meetings with groups of emotional support students throughout the week. She teaches behavioral modification in the study skills classes. She has approximately 30-32 students. (N.T. 70-71, 93-94; Complainant Exhibit 5).
32. Social workers and Ms. DeCarolis function as members of the Pupil Personnel Services team to provide an interdisciplinary approach to the care of students with identified problems at school or at home. This involves assisting the school psychologist in multidisciplinary process. Ms. DeCarolis' role is limited to her emotional support students in individual therapy. (N.T. 73-74, 94-95; Complainant Exhibits 4 & 5).
33. Social workers and Ms. DeCarolis assist special education teachers in the development and implementation of behavior management plans to be effectuated both in and outside of school for emotional support students. Mercy employes also perform these duties with respect to their clients. (N.T. 74-75; Complainant Exhibit 4).
34. Social workers and Ms. DeCarolis are responsible for the retrieval of students. Mercy performs these duties only if it involves one of their clients. (N.T. 77-78; Complainant Exhibit 4).
35. Social workers and Ms. DeCarolis provide support to foster children within the District when a referral is given for a specific problem. Mercy also provides support to foster children for specific problems if it involves one of their clients. (N.T. 80-81; Complainant Exhibit 4).
36. Social workers and Ms. DeCarolis assist in the referral process to child welfare in situations involving suspected child abuse, incorrigibility, truancy and unsafe or unfit living conditions. (N.T. 81; Complainant Exhibit 4).
37. Social workers and Ms. DeCarolis maintain a regular work load of individual cases under their responsibility. These include for example the following: pregnancy, chemical dependency, family problems, mental health problems, medical problems, behavioral problems and attendance problems. (N.T. 83-84; Complainant Exhibit 4).
38. All duties performed by social workers apply to emotional support students currently and prior to the contract with Glade Run. (N.T. 85-86, 101).
39. Social workers and Ms. DeCarolis consult with staff, parents and the community on issues concerning student needs. (N.T. 97-98; Complainant Exhibit 5).
40. All of the duties performed by Ms. DeCarolis are incidental to her responsibilities to provide individual therapy services to students without qualifying insurance for Mercy Behavioral Health. (N.T. 103).

DISCUSSION

The Union concedes that individual therapy to emotional support or any other students was never bargaining unit work. However, the Union contends that the individual therapist, Lisa DeCarolis, who is employed by Glade Run, performs duties that the social workers historically and exclusively performed. This case raises the following issue: Whether a public employer violates its bargaining obligations under PERA where it lawfully subcontracts the non-bargaining unit work of providing individual therapy services and where the incidental work in support of those services that also flows to the subcontractor is being and has been performed by the bargaining unit. The Board answered this question in the negative in **Plum Borough Educational Secretaries ESPA/PSEA v. Plum Borough School District**, 44 PPER 60 (Final Order, 2012).

In **Plum Borough School District**, bargaining unit members were responsible for calling and assigning day-to-day substitutes for teachers, teachers' aides, nurses, secretaries, food service workers and custodians. They maintained statements to submit to the district's payroll department. They recorded and monitored call-offs by district employes and maintained payroll records for the substitutes. The school district contracted with Kelley Services to provide those same day-to-day substitutes. The day-to-day substitutes were not bargaining unit members, so the substitute work was not bargaining unit work.

The contract with Kelly provided that Kelly would hire and assign employes to the district and maintain all personnel and payroll records for its employes. Kelly would also be responsible for making appropriate payroll, insurance and tax deductions. Once Kelly began providing day-to-day substitutes to the district, it also began performing the work formerly performed by unit members of calling substitutes and assigning them to vacant positions, maintaining the roster of substitutes and the extra service statements to submit to payroll for payment, recording and monitoring call-offs by district employes and maintaining payroll records for substitute employes.

The Board, in **Plum Borough School District**, held that, because the district lawfully subcontracted the work of day-to-day substitutes to Kelly (since that work was not bargaining unit work), "the support work associated with their employment is now the responsibility of Kelly." *Id.* at 208. The Board further held that "with respect to the remaining day-to-day substitutes who are now employes of Kelly, in the absence of a timely demand by the Association to bargain the impact of the decision to have Kelly provide day-to-day substitutes, there is no basis upon which to find a violation of Section 1201(a)(1) and (5) of PERA." Accordingly, the bargaining unit work that was incidental to or in support of the non-bargaining unit work may be lawfully removed with the non-bargaining unit work, which management had the prerogative to subcontract. The Union, therefore, had the burden to make a timely demand to bargain the identifiable and severable impact of losing the work. **Plum Borough School District, supra.**

In this case, the District lawfully subcontracted individual therapy to emotional support students (without insurance acceptable to Mercy) to Glade Run. Many of the job duties performed by Ms. DeCarolis to provide individual therapy services were also performed by social workers in the bargaining unit for emotional support students outside of the individual therapy context. However, because those duties are incidental to and in support of the provision of the lawfully subcontracted individual therapy services, those duties must also lawfully flow to the subcontractor. **Plum Borough School District, supra.**

Moreover, the work incidental to and in support of the provision of individual therapy has historically and exclusively not been bargaining unit work. Mercy employes have been performing much of the same incidentals to individual therapy for many years while that same work was shared by the bargaining unit for non-individual therapy students. For example, Mercy has referred students to and coordinates with outside facilitators such as the County, the police and hospitals. Mercy employes perform crisis intervention duties if they are in the building at the time and it involves one of their insured clients. Crisis intervention duties have been performed, but not exclusively, by social workers for non-individual therapy students. Ms. DeCarolis also coordinates with

Children Youth, and Family as well as hospitals for the emotional support students to whom she provides individual therapy. Social workers and Ms. DeCarolis assist special education teachers in the development and implementation of behavior management plans to be effectuated both in and outside of school for emotional support students. Mercy employes also perform these duties with respect to their clients. Social workers and Ms. DeCarolis are responsible for the retrieval of students. Mercy performs these duties when it involves one of their clients. Mercy provides support to foster children for specific problems if it involves one of their clients, which is also a responsibility of the bargaining unit social workers.¹

The Union also contends that Ms. Cortazzo's transfer to the Elementary school supports the conclusion that the District transferred her work to Ms. DeCarolis, the Glade Run employe. However, Dr. Shipley, the District's Superintendent, credibly testified that she was transferred because there was a need for her services at the Elementary School and there was a projected decline in enrollment at the High School, due to the enrollment figures in the lower grades.²

Accordingly, the District has not engaged in unfair practices in violation of Section 1201(a) (1) and (5) of PERA. The work that is performed by Ms. DeCarolis, which is also performed by the bargaining unit, is work that was permissibly transferred to Glade Run because it is incidental to and in support of her performance of the non-unit work of providing individual therapy to emotional support students who did not possess qualifying insurance for Mercy. Also, the District's years of experience with Mercy has established that the work incidental to the provision of individual therapy services is not bargaining unit work because non-unit employes have been performing that work for many years.

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 under PERA.
2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has **not** committed unfair practices within the meaning of Section 1201(a) (1) or (5).

ORDER

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

HEREBY ORDERS AND DIRECTS

That the charge 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 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

¹ Although the record shows that Ms. DeCarolis also has group meetings as do the social workers, the record is unclear whether those groups meetings are with her individual therapy students or non-individual therapy emotional support students. Therefore, I am unable to determine whether this work is incidental to and in support of the provision of individual therapy services or bargaining unit work.

² Dr. Shipley was the Assistant Superintendent at the time.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighteenth day of February, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner