

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CENTRAL COLUMBIA EDUCATIONAL
SUPPORT PERSONNEL ASSOCIATION

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CASE NO. PERA-C-13-38-E

v.

CENTRAL COLUMBIA SCHOOL DISTRICT

PROPOSED DECISION AND ORDER

On February 25, 2013, the Central Columbia Educational Support Personnel Association (Union or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Central Columbia School District (District) violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the District has refused to bargain wages, hours and other terms and conditions of employment for part-time cafeteria workers and has refused to recognize the Union as the exclusive bargaining representative of those employes.

On April 1, 2013, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of October 9, 2013, in Harrisburg. On October 3, 2013, I granted the Union's request to continue the hearing, and rescheduled the hearing for February 21, 2014. On February 20, 2014, I granted the Union's second request to continue the hearing, which I rescheduled for March 31, 2014. On March 14, 2014, I granted the District's continuance request, and rescheduled the hearing for August 13, 2014. On August 8, 2014, I continued the matter generally based on the representation that the parties would enter factual stipulations in lieu of a hearing. The parties filed the Joint Stipulations of Fact (JSF) on October 2, 2014. The Union filed its brief on November 3, 2014, and the District filed its brief on December 4, 2014.

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. (JSF ¶ 2)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (JSF ¶ 1)
3. In 1971, the Board issued a Unit Certification for the Association which certified the Association's bargaining unit as follows: "In a subdivision of the employer unit comprised of custodians, matrons, and cooks; and excluding all professional employees, supervisors, first level supervisors, and confidential employees as defined in the Act." (JSF ¶ 3)
4. In 1984, the Board granted a Petition for Unit Clarification (filed by the Association) which included and added the following positions to the Association's Unit Certification; "lead custodian, van driver, and maintenance man." (JSF ¶ 4)
5. Between the years 1976 and 1999, the Association and District negotiated seven collective bargaining agreements (CBAs). Between 1976 and 1990, there were four CBAs that contained express provisions that covered both full-time and part-time cafeteria employees, including pay, benefits, work leaves, and seniority. Then, between 1990 and 1999, there were three additional CBAs that contained a separate "Appendix C" that expressly covered part-time cafeteria employees (who worked four or more hours per day) and again addressed the pay, benefits, work leaves, and seniority for said employees.

Appendix C, however, did not address part-time cafeteria employees who worked less than four hours a day. (JSF ¶ 5)

6. In 1999, the parties negotiated the CBA that no longer contained provisions addressing part-time cafeteria employees. The CBA instead addressed the working conditions of only full-time cafeteria employees (pay, benefits, work leaves, and seniority). (JSF ¶ 6)

7. Since 1999 and to the present day, none of the CBA's between the Association and the District contains provisions addressing part-time cafeteria employees. The CBA's, instead, address the working conditions of only full-time cafeteria employees (pay, benefits, work leaves, and seniority). (JSF ¶ 7)

8. Despite the changes in the CBA's, neither the Association nor the District, at any time, ever filed a Unit Clarification to remove any position or job description from the Association's Unit Certification (including part-time cafeteria employees); nor did the Board ever issue any kind of order or ruling that removes any position or job description from the Association's Unit Certification (including part-time cafeteria employees). (JSF ¶ 8)

9. On or about November 15, 2012, the Association sought to bargain a new CBA that again contained express provisions addressing the working terms and conditions of part-time cafeteria employees. (JSF ¶ 9)

10. The part-time cafeteria employees at the District work daily throughout the school year an average of 2-3 hours a day and 10-15 hours a week. Full-time and part-time cafeteria employees cook, prepare, and serve food to the District's students. (JSF ¶ 10)

11. At all times since 1971, full time cafeteria employees have been in the Association's bargaining unit and have always been covered by the parties' Collective Bargaining Agreements. (JSF ¶ 11)

DISCUSSION

The Union argues that all the part-time cafeteria workers have always been included in the bargaining unit as defined and certified by the Board. Consequently, the Union maintains that the District has engaged in unfair practices by refusing to bargain wages, hours and other terms and conditions of employment of the part-time cafeteria workers and by refusing to recognize the Union as the exclusive bargaining representative of those employees. The issue presented in this case is whether part-time cafeteria workers, who work ten-to- fifteen hours per week, are included in the bargaining unit of non-professional employees at the District.

In 1971, the Board issued a Unit Certification for the Association which described the bargaining unit as follows: "In a subdivision of the employer unit comprised of custodians, matrons, and cooks; and excluding all professional employees, supervisors, first level supervisors, and confidential employees as defined in the Act." (F.F. 3). Since the Board's initial certification, the term "cooks" in the unit description consistently applied to, and the parties bargained over, all full-time cafeteria workers. At times, the parties bargained over part-time cafeteria workers. Indeed, at all times since 1971, full-time cafeteria employees have been in the Association's bargaining unit and have always been covered by the parties' Collective Bargaining Agreements. Both full-time and part-time cafeteria employees cook, prepare, and serve food to the District's students. The Board has held that the designation and inclusion of a position in a bargaining unit description includes all full-time and regular part-time employees in that position. *In the Matter of the Employees of Clairton City School District*, 12 PPER ¶ 12375 (Nisi Order of Certification, 1981). Therefore, the Board's unit certification includes all full-time and regular part-time cafeteria workers, designated as cooks in the unit description.

The District makes a distinction between part-time employees, who work two-to-three hours per day, or ten-to-fifteen hours per week, and part-time cafeteria employees, who work four hours per day or twenty hours per week. The District contends that the bargaining history between the parties was limited to four-hour part-time employees and never included two-to-three hour part-time employees. The District's argument, however, is inconsistent with Board precedent.

The Board has held that prior bargaining history (demonstrating the parties' agreement to exclude positions or their understanding that certain positions are not included in the Board certified bargaining unit) does not authorize an employer to refuse to bargain over those positions or to unilaterally conclude that they are no longer or never were included. **Haverford Township Educational Support Personnel Ass'n v. Haverford Township Sch. Dist.**, 30 PPER ¶ 30201 (Final Order, 1999). Indeed, the appropriateness and scope of a bargaining unit is within the sole jurisdiction and discretion of the Board, and the parties may not agree or decide to include or exclude employees. **In the Matter of the Employees of Luzerne County I.U. Unit # 18**, 29 PPER ¶ 29209 (Proposed Order of Unit Clarification, 1998). The parties cannot by agreement deny or bargain away employees' statutory rights under PERA.

Moreover, the Board distinguishes between regular and casual employees. It does not distinguish between regular employees who work more than four hours or less than four hours per day. The Board requires a showing that employees work on a scheduled basis, established in advance of their work day, and that they are scheduled frequently enough to establish a reasonable expectation of continued employment. **In the Matter of the Employees of Washington Township**, 45 PPER 92 (Order Directing Submission of Eligibility List, 2014). The stipulation of facts establishes that the part-time cafeteria workers satisfy the Board's requirements of regular part-time employees. They are indeed scheduled in advance of their work day to work two-to-three hours every school day, which is frequently enough for those employees to reasonably expect continued employment.

The District maintains that, if the Board determines that the part-time cafeteria workers are included in the bargaining unit, there must be an election within the meaning of **In the Matter of the Employees of Westmoreland Intermediate Unit # 18**, 12 PPER ¶ 12347 (Order and Notice of Election, 1981), because the number of part-time cafeteria workers far exceeds the fifteen percent limit for accreting them into the unit without an election. However, as the Union correctly emphasized, the part-time cafeteria workers are not being accreted into an existing unit. The part-time cafeteria workers are already in the Unit and the District has simply refused to bargain over their wages, hours and other terms and conditions of employment. Also, as properly argued by the Union, the record in this case, which is comprised of a joint stipulation of facts, does not contain any evidence or information regarding the numbers of full-time and part-time employees.

Accordingly, the District engaged in unfair practices when it refused to recognize the Union as the certified exclusive collective bargaining representative of all part-time cafeteria employees of the District and when it refused to bargain wages, hours and other terms and conditions of employment of those employees.

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 refusing to recognize the Union as the exclusive collective bargaining representative of any and all part-time cafeteria workers and from refusing to bargain the wages, hours and other terms and conditions of employment of those part-time cafeteria workers;

4. Take the following affirmative action:

(a) Write a letter to the Union acknowledging that it is the exclusive bargaining representative for any and all part-time cafeteria workers;

(b) Bargain in good faith the wages, hours and other terms and conditions of employment of any and all part-time cafeteria workers;

(c) 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

(d) 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-third day of April, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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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 refusing to recognize the Union as the exclusive collective bargaining representative of any and all part-time cafeteria workers and from refusing to bargain the wages, hours and other terms and conditions of employment of those part-time cafeteria workers; that it has written a letter to the Union acknowledging that it is the exclusive bargaining representative for all part-time cafeteria workers; bargained in good faith the wages, hours and other terms and conditions of employment of any and all part-time cafeteria workers; that it has posted a copy of this Decision and Order as directed therein and that it has furnished to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with the Decision and Order by completion and filing of this attached Affidavit.

Signature/Date

Title

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

Signature of Notary Public