COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RIVERISDE EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION	:	
v.	:	Case No. PERA-C-14-329-E
RIVERSIDE SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On October 6, 2014, the Riverside Educational Support Personnel Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Riverside School District (District or Employer), alleging that the District violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by unilaterally removing bargaining unit work.

On October 10, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating May 1, 2015, in Harrisburg, as the time and place of hearing, if necessary.

A hearing was necessary and was held before the undersigned Hearing Examiner of the Board on May 1, 2015, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on July 23, 2015. The District filed a post-hearing brief in support of its position on September 25, 2015.

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 District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7-8)

2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8)

3. The Association is the exclusive bargaining agent for a unit of nonprofessional employes who work at the District, which includes the maintenance employes. (Exhibit A-1)

4. Maintenance employes perform the work of maintaining and repairing the District’s equipment, cleaning the District’s premises, snow removal, plumbing, electrical work, and cutting the grass. (N.T. 13-15, 54, 75)

5. The District has three buildings, which include a high school and two elementary schools, known as Elementary East and Elementary West. (N.T. 14)

6. Before August 2014, maintenance workers in the Association’s bargaining unit had always performed the work of cleaning the District’s cafeterias in all three buildings. These duties included cleaning the floors in the cafeterias (and/or using machines to scrub the floor), cleaning and wiping down the cafeteria tables, folding up and stacking away the cafeteria tables during cleanings, and then unfolding and putting the tables back in place after the cafeteria cleanings (cafeteria cleaning work). (N.T. 15-17, 55-56, 76)

7. Before August 2014, the maintenance workers in the Association’s bargaining unit had exclusively performed all the cafeteria cleaning work for the past 17 to 22 years. (N.T. 17, 55-56, 76)

8. Before August 2014, maintenance workers in the Association's bargaining unit had always exclusively performed the work of removing trash in all three buildings for the past 17 to 22 years. This work included collecting/removing the trash and debris from the cafeteria floors, placing it in barrels, and taking the barrels out of the buildings to the dumpsters (trash removal work). (N.T. 17-18, 46-47, 55-57, 71)

9. Before August 2014, maintenance workers in the Association's bargaining unit had always exclusively performed the work of transporting meals and food for the District's students to and between the District's buildings for the past 17 to 22 years. Specifically, the maintenance workers in the bargaining unit used a District vehicle to pick up the meals and food at the high school, drive the meals and food to the other two buildings, unload the meals and food from the truck, and bring the meals and food into the District's buildings (food delivery work). (N.T. 16-19, 31, 57-58, 76-77)

10. Before August 2014, the District used a food service company, Aramark, to cook, prepare and serve food to the District's students. Aramark is a separate and outside company that is unaffiliated with the District. Thus, Aramark employes are not employes of the District, although Aramark employes work on the District's premises. (N.T. 20-22)

11. Before August 2014, Aramark employes did clean areas in the kitchen where food was prepared (i.e., cleaning pots and pans and the salad bar/deli areas). However, Aramark employes did not perform any cafeteria cleaning work, trash removal work, or food delivery work. (N.T. 16-19, 21-23, 31, 40, 50, 55-58, 76-77, 83-87)[1]

12. In July 2014, the Association learned that the District planned to begin using Aramark employes to perform cafeteria cleaning work, trash removal work, and food delivery work. The Association's President David Prislupsky approached the District's Business Manager, Joseph Surridge, and objected to the removal of bargaining unit work. (N.T. 19-25)

13. The 2014-2015 school year began in early September 2014. (N.T. 26)

14. Since the start of the 2014-2015 school year, Aramark employes have been performing all cafeteria cleaning work, trash removal work, and food delivery work at all three District buildings, including the high school, Elementary East, and Elementary West, on a daily or weekly basis. (N.T. 26-32, 34-35, 55-58, 75-78)

15. The District never obtained the Association's consent to use Aramark employes to perform any of the cafeteria cleaning work, trash removal work, or food delivery work. Nor has the District ever bargained the issue with the Association. (N.T. 35)

DISCUSSION

In its charge, the Association alleged that the District violated Section 1201(a)(1) and (5) of the Act[2] by unilaterally removing cafeteria cleaning work, trash removal work, and food delivery work from the bargaining unit. The District, meanwhile, contends that it had no duty to bargain the removal of such work, that these duties were shared between the bargaining unit and Aramark employes prior to the 2014-2015 school year, and the removal of such work had minimal impact on the Association's members.

It is well settled that the removal of bargaining unit work is a mandatory subject of bargaining and an employer commits an unfair practice when it fails to bargain with

[1] Aramark employes discarded the trash in the kitchen area into the garbage cans there, but the Association's maintenance workers took the trash cans from the kitchen area, transported them outside, and emptied them into the dumpsters. (N.T. 51, 72)

[2] Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

the exclusive representative before transferring bargaining unit work to an employe outside the unit. **Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District**, 37 PPER ¶ 30 (Proposed Decision and Order, 2006) citing **Midland Borough School District v. PLRB**, 560 A.2d 303 (Pa. Cmwlth. 1989); **PLRB v. Mars Area School District**, 389 A.2d 1073 (Pa. 1978). The complainant in an unfair practices proceeding has the burden of proving the charges alleged. **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977).

In this case, the Association has sustained its burden of proving that the District committed unfair practices in violation of Section 1201(a)(1) and (5) of the Act. Indeed, the record clearly shows that the Association represents the maintenance employes of the District. Likewise, the record shows that the maintenance employes had exclusively performed the cafeteria cleaning work, trash removal work, and food delivery work prior to the start of the 2014-2015 school year. The record further shows that the District unilaterally removed the cafeteria cleaning work, trash removal work, and food delivery work from the bargaining unit and began using Aramark employes to perform the same, despite the Aramark employes having never performed this work in the past. Similarly, the District did not obtain the Association's consent to use Aramark employes to perform bargaining unit work, nor did the District bargain the issue with the Association. As a result, the District clearly violated the Act.

In its brief, the District contends that it had the managerial prerogative under Section 702 of the Act[3] to transfer the cafeteria cleaning work, trash removal work, and food delivery work to employes outside the unit. However, as previously set forth above, the Pennsylvania Supreme Court held nearly four decades ago that the removal of bargaining unit work from the unit is a mandatory subject of bargaining. **Mars Area School District, supra**. "Indeed, the Board and the Commonwealth Court have repeatedly recognized that under the balancing test of **PLRB v. State College Area School District**, 337 A.2d 262 (Pa. 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." **Tredyffrin-Easttown Education Ass'n v. Tredyffrin-Easttown School District**, 43 PPER 11 (Final Order, 2011) citing **Commonwealth v. PLRB**, 568 A.2d 730 (Pa. Cmwlth. 1990). As such, the District did not have the managerial prerogative under Section 702 of the Act to unilaterally divert bargaining unit work to employes outside the unit.

Similarly, the District's contention that the removal of bargaining unit work had only a minimal impact on the Association's members is also without merit. As the Association correctly points out, the removal of ***any*** bargaining unit work is a per se unfair labor practice. **City of Harrisburg v. PLRB**, 605 A.2d 440, 442 (Pa. Cmwlth. 1992)(emphasis in original). There is no threshold amount of bargaining unit work that needs to be diverted; even a de minimis amount is actionable under PERA. **Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman School District**, 37 PPER 56 (Final Order, 2006). Nor does it matter whether the removal of bargaining unit work resulted in the termination or layoff of bargaining unit employes, or whether the unit members lost pay; instead, the analysis is whether the unit lost work. **Tredyffrin-Easttown School District**, 43 PPER 11 (Final Order, 2011). The record here shows that the unit did, indeed, lose work. Therefore, the District's argument in this regard is rejected.

Finally, the District argues that the Association has not sustained its burden of proving a violation of the Act because the bargaining unit employes shared the cafeteria cleaning work, trash removal work, and food delivery work with Aramark employes prior to the 2014-2015 school year. However, this argument is not supported by the record. To the contrary, the record clearly shows that the bargaining unit members exclusively performed these duties prior to the start of the 2014-2015 school year. Before August 2014, Aramark employes did clean areas in the kitchen where food was prepared (i.e.,

[3] Section 702 of the Act provides that "[p]ublic employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by the public employe representative." 43 P.S. § 1101.702.

cleaning pots and pans and the salad bar/deli areas). However, Aramark employes did not perform any cafeteria cleaning work, trash removal work, or food delivery work. As a result, the District's argument is unavailing.

In any case, even if the bargaining unit members shared these duties with Aramark employes prior to the 2014-2015 school year, the District has still committed unfair practices because the record shows that Aramark employes have been performing ***all*** cafeteria cleaning work, trash removal work, and food delivery work since the start of the 2014-2015 school year. *See* **Tredyffrin-Easttown School District**, 43 PPER 11 (Final Order, 2011)(holding that 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; an employer also commits an unfair practice by altering a past practice concerning the extent to which bargaining unit employes and non-bargaining unit personnel had previously shared work). As such, the District's argument must fail.

On this record, I must conclude that the District has committed unfair practices in violation of Section 1201(a)(1) and (5) of the Act.

CONCLUSIONS

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

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

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

3. The Board has jurisdiction over the parties hereto.

4. The Riverside School 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 Act, the Examiner

HEREBY ORDERS AND DIRECTS

That the District shall:

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

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

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(a) Immediately return the cafeteria cleaning work, trash removal work, and food delivery work to the bargaining unit and rescind any contracts, work appointments, and/or other assignments the District has entered into regarding the same;

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

(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; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 13th day of October, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA LABOR RELATIONS BOARD

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	:	Case No. PERA-C-14-329-E
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RIVERSIDE SCHOOL DISTRICT	:	

AFFIDAVIT OF COMPLIANCE

Riverside School 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 complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public