

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WEST SIDE CAREER AND TECHNOLOGY :
CENTER EDUCATION ASSOCIATION :
 :
v. : Case No. PERA-C-13-97-E
 :
WEST SIDE CAREER AND TECHNOLOGY :
CENTER :

PROPOSED DECISION AND ORDER

On April 26, 2013, the West Side Career and Technology Center Education Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the West Side Career Technology Center (CTC or Center) alleging that the CTC violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA or Act).

On May 16, 2013, 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 the mutual agreement of the parties, and designating December 12, 2013 in Harrisburg, as the time and place of hearing, if necessary.

The Examiner continued the hearing to April 3, 2014, at the request of the CTC and without objection from the Association. On April 2, 2014, the Examiner continued the hearing to September 24, 2014 at the request of the Association and without objection from the CTC.

The hearing was held on September 24, 2014 before Hearing Examiner Thomas P. Leonard, Esquire, during which all parties in interest 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 December 8, 2014. The CTC filed a post-hearing brief in support of its position on January 2, 2015. On April 6, 2015, the chief counsel reassigned this case to the undersigned Hearing Examiner due to the retirement of Hearing Examiner Leonard.

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. West Side Career and Technology Center is a public employer within the meaning of Section 301(1) of PERA. (N.T. 13; Joint Exhibit 1)
2. West Side Career and Technology Center Education Association is an employe organization within the meaning of section 301(3) of PERA. (N.T. 13; Joint Exhibit 1)
3. The Association is the exclusive representative of the Center's professional employees. (N.T. 13, Joint Exhibit 1)
4. The CTC is a technical school that serves high school students, grades 9-12. (N.T. 15)
5. There is only one building at the CTC. (N.T. 15-16)
6. Before the end of the 2011-2012 school year, Dawn Harding was a member of the Association and had worked at the CTC as the full-time librarian for five years. (N.T. 14-15, 20)
7. As the librarian, Harding's duties were: (1) taking care of and overseeing the books in the library (checking in/out books, monitoring their borrow/return status,

communicating with students about returning books, sending letters to students/parents, maintaining records tracking the borrow/return status of books, imposing fines for overdue books, and re-shelving books), (2) updating the literature in the library and ordering new books; (3) assisting students on how to use the resources in the library (Dewey Decimal system, computers) and (4) helping maintain the facilities and equipment in the library. (N.T. 16-20, 32, 79-81).

8. Duties regarding checking in/out books (and tracking their borrow/return status) was the greatest function of the librarian, with Harding spending roughly seventy percent (70%) of her time on these duties. (N.T. 18-19, 32)

9. Five to ten students, on average, borrowed books from the library every day, and each student could borrow up to five books at a time. (N.T. 21)

10. There were between 2,000 to 3,000 books that Harding oversaw and maintained in the library. (N.T. 18)

11. When students visited the library, they usually came on their own and had no teacher or adult with them. Some had behavioral problems which required an adult presence to ensure there was no misbehavior. Harding supervised the students in the library, and made sure the students did not misbehave. She addressed disciplinary issues if they arose. (N.T. 21-24, 71, 88-89).

12. Throughout her five years of employment with the CTC, Harding never had an aide, secretary, or assistant in the library and performed all the librarian duties on her own. (N.T. 24, 80-81)

13. There was never an occasion, before the end of the 2011-2012 school year, when the librarian's duties were performed by someone outside the Association's bargaining unit. That had been the case for at least the preceding twenty-one years. (N.T. 24, 80-81).

14. On March 23, 2012, the CTC School Board announced at a meeting that it was going to furlough librarian Dawn Harding, and her last day ended up being in June 2012. (N.T. 15, 25-26, 82-83)

15. After the CTC School Board announced the furlough, Michael Dennis, the Association president, met with Nancy Tkatch, the CTC's Administrative Director, to discuss the furlough and the future of the library. Tkatch told him that the library was going to be eliminated. (N.T. 82-83)

16. When the 2012-2013 school year began, after Harding was furloughed, CTC did not close its library. The library remained open and had the same books and facilities. Students and staff continued to use the library. The CTC renamed the library the multi-purpose room. (N.T. 60-64, 83)

17. Thomas Pieczynski is the Sales, Distributive Education and Marketing teacher, a position in the professional bargaining unit. (N.T. 59-60)

18. In the 2012-2013 school year, Pieczynski was a member of the Association's executive committee. (N.T. 74)

19. At the start of the 2012-2013 school year, Pieczynski contacted the main office at the CTC to find out who was performing the librarian work after Harding's furlough. (N.T. 64-65)

20. The main office forwarded Pieczynski's call to secretary Samantha Warnagiris, who informed Pieczynski that "all the library services, books, things of that nature would go through her [Mrs. Warnagiris]." (N.T. 64-65, 67-68).

21. Warnagiris is a secretary at CTC and does not belong to the Association's bargaining unit. (N.T. 64-65)

22. After Pieczynski spoke with secretary Warnagiris, CTC posted a sign in the library stating: "Anyone who wishes to sign out a book, please see Mrs. Warnagiris in the Main Office beforehand." CTC placed the signs in the library and at the desk where librarian Harding used to be stationed. (N.T. 69-70, Association Exhibit 1).

23. On November 13, 2012, Warnagiris sent the following email to "all Academic Teachers, All Administration; All Business Office; All Career Tech Ed Teachers; All DPS Office; All Main Office; All Para Educators;" and 16 other names, with the Subject: Library Books. The email stated:

Anyone who wishes to borrow a book from the Library (Multi-Purpose Center) must see me (Mrs. Warnagiris) in the Main Office so that a record can be kept of all books in and out.

(N.T. 73-74, 100, CTC Exhibit 8)

24. Pieczynski, who was on the Association Executive Committee, admitted to receiving the November 13, 2012 email. (N.T. 74)

25. Michael Dennis, who was Association Vice President, admitted to receiving the November 13, 2012 email. (N.T. 93)

DISCUSSION

The Association's charge alleges that the CTC violated Section 1201(a) (1) and (5) of PERA¹ by unilaterally transferring the bargaining unit work of the librarian, a position held by Dawn Harding until her furlough in June 2012, to a non-bargaining unit employe.

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 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 Commonwealth Court has held that a public employer commits an unfair practice when it unilaterally transfers *any* unit work to non-members without first bargaining with the unit. **City of Harrisburg v. PLRB**, 605 A.2d 440, 442 (Pa. Cmwlth. 1992) (emphasis in original). 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 record establishes that the CTC transferred the bargaining unit work of the only librarian to a non-bargaining unit secretary. CTC furloughed the librarian, and instead of closing the library, it renamed it the "multi-purpose center," and transferred 70 percent of the librarian's duties to a secretary, a non-bargaining unit employe, without the Association's consent and without bargaining. Before it is decided whether this transfer of bargaining unit work was an unfair practice, however, it is necessary to address the procedural issue of timeliness.

The Center defends the charge on the grounds that it was not timely filed, i.e. within the four months limitations period set forth in Section 1505 of PERA, 43 P.S. §1201.1505. The charge was filed on April 26, 2013. The CTC argues that Association

¹ 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.

officials had knowledge of the transfer of the librarian's work as of November 13, 2012, which is outside the Act's four month limitations period.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements that were made more than four months prior to the filing of the charge." 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. **Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College**, 35 PPER 24 (Final Order, 2004). The statute of limitations begins to run when the union receives notice of the employer action that is the subject of the unfair practice charge. **Upper Gwynedd Township, supra**. However, notice to employees is not considered notice to the union unless it is shown that the employees are the union's agents. **Teamsters Local 77 v. Delaware County**, 29 PPER ¶ 29087 (Final Order, 1998), **aff'd sub nom., County of Delaware v. PLRB**, 735 A.2d 131 (Pa. Cmwlth. 1999), **appeal denied**, 561 Pa. 679, 749 A.2d 473 (2000); **AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Military Affairs**, 22 PPER ¶ 22205 (Final Order, 1991).

In the present case, the CTC points to a November 13, 2012 email sent to everyone in the CTC that anyone who wishes to take a book out of the library should see Samantha Warnagiris, a secretary and not a member of the bargaining unit. Two Association officials, Thomas Pieczynski, an executive board member, and Michael Dennis, the Association's Vice President, admitted to receiving that email. The CTC argues that due to their knowledge of the transfer of the work on November 13, 2012, the filing of the charge should have been done no later than March 13, 2013.

The Association responds that the Board should not give weight to the email because it was not sent by a CTC administrator but only by a secretary, thereby lessening its authority.

However, the email was not the first indication that the work was transferred. It was preceded by the posting of a sign in the library stating "[a]nyone who wishes to sign out a book, please see Mrs. Warnagiris in the Main Office beforehand." Mrs. Warnagiris then sent her email to all administrators as well as everyone else in the CTC. Similarly, the Association's Vice President admitted that Warnagiris advised him at the start of the 2012-2013 school year that "all library services, books, things of that nature would go through her." It is hard to believe that the administration would not have been aware or approved of both the posting of the signs and the sending of the email. Even if one accepts the Association's argument, the Association's officials admitted being put on notice that bargaining unit work was being transferred, and even if it was done by an unauthorized employee (Warnagiris), the notice should have caused the officials to investigate and determine who was doing the work.

The Association also contends that it was not until later, in January 2013, when Pieczynski spoke with Nancy Tkatch, the CTC Director, that it learned of the full scope or nature of Ms. Warnagiris' involvement with the library. The Association maintains it was at that point that Pieczynski learned the library was going to stay open, that students would be allowed in the library to read and that the CTC would somehow supervise the students with a non-bargaining unit employee.

However, the record shows that 70 percent of the librarian's duties involved checking books in and out and making sure books were returned to the library. As a result, the Association should have known on November 12, 2013, that these duties would be performed by a non-bargaining unit employee.

The Association argues that the Board should use the January 2013 discussion with Administrative Director Tkatch as the start of the statute of limitations. The Association cites cases where the Board has held that the statute of limitations does not begin to run until a public employer makes its position known to the union in an unequivocal fashion. **North Huntingdon Township**, 19 PPER ¶ 19009 (1987) (refusal to offer light duty) and **State College Borough**, 18 PPER ¶ 18119 (1987) (employer must "clearly" communicate to the union its refusal to arbitrate).

In the present case, however, the facts are different. The employer transferred work, which was announced clearly in an email on November 13, 2012. Furthermore, the problem with the Association's argument is that it does not explain why Pieczynski waited until January to ask the CTC administration questions about the transfer. Also, if this argument is taken to its logical end, it would allow a bargaining representative to set its own timetable for asking questions and investigating an alleged removal of bargaining unit work. Such a position is misguided and untenable. On these facts, I must conclude that the Association's charge was not timely filed within the four month limitations period set forth in the Act.

CONCLUSIONS

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

1. West Side Career and Technology Center is a public employer under Section 301(1) of PERA.
2. West Side Career and Technology Center Education Association is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. That the charge is not timely filed so as to meet the statute of limitations in Section 1505 of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA the Examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint 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.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this ninth day of June, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner