

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLENTOWN EDUCATION ASSOCIATION :
PSEA/NEA :
v. : CASE NO. PERA-C-14-420-E
ALLENTOWN CITY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On December 29, 2014, the Allentown Education Association (Union or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Allentown City School District (District) violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA or Act). The Union specifically alleged that the District unlawfully removed bargaining unit work from the professional bargaining unit by placing the Webmaster position in the nonprofessional, secretarial bargaining unit. On January 15, 2015, the Secretary of the Board issued a letter informing the Union that the Board was unable to process the charge and requested that the Union amend its charge to include allegations that the District has an employe in the nonprofessional unit performing the duties of the Webmaster. On February 4, 2015, the Union filed an amended charge additionally alleging that the District hired Brent Hugo into the secretarial unit who has been performing the job duties of "Multimedia/Web Developer Specialist (MMDS)."

On March 13, 2015, the Secretary of the Board issued a complaint and notice of hearing, directing that a hearing be held on September 18, 2015, in Harrisburg. On September 15, 2015, the District filed a Motion for Deferral to Arbitration. On September 17, 2015, the Union filed a Response in Opposition to Respondent's Motion for Deferral to Arbitration. By letter dated September 17, 2015, I denied the District's Motion for Deferral to Arbitration. During the hearing on September 18, 2015, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On November 20, 2015, the Union filed its post-hearing brief. The District filed its post-hearing brief on December 23, 2015.

The examiner, based upon all matters 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)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. Christina Mazzella is the Executive Director of Human Resources for the District. (N.T. 59)
4. Kimberly Golden Benner has been the Director of Communications for the District since November 19, 2012. (N.T. 83, 86)
5. John Monahan worked as an educator at the District from the 2009-2010 school year to the 2013-2014 school year. He no longer works for the District. During his District employment, Mr. Monahan was in the professional bargaining unit. During his time as a teacher, Mr. Monahan also received a stipend for performing Technology Facilitator duties. As a teacher and Technology Facilitator, Mr. Monahan was a ten-month employe and worked 10 extra days during the summer. He received a promotion to Supervisor of Instruction and stopped performing the duties of Technology Facilitator on October 31, 2013. He served as Supervisor of Instruction from November 1, 2013 to August 13, 2014, when he resigned from the District. (62-67, 72, 81)
6. Mr. Monahan began reporting to Ms. Benner in the Communications Office immediately after the Thanksgiving Holiday in 2012. Mr. Monahan and Ms. Benner received

twelve hours of training over two days from the vendor of "Schoolwires," which is a program for web-page editing.¹ Mr. Monahan worked in Ms. Benner's office for 11 months, including 10 days during summer break. During that time, Mr. Monahan's time was split between the Communications Office, the Accountability Office and the IT Office. The Communications Office had Mr. Monahan approximately 25% of his time. (N.T. 86, 91-92, 99-100)

7. As Technology Facilitator, Mr. Monahan had access codes allowing him to update content on and enter new information into the District's website. He typed changes in calendar events, added photos and uploaded pre-written stories about students or schools. He did not compose any of the content, and he did not write any of the code necessary to make changes to the website. Any employees with access codes could change content on web pages. (N.T. 87-89)

8. Ms. Benner, her secretaries, web managers at other school buildings and Tom Derhammer, the Director of IT, also have access codes and change content on specific web pages within the District's website. These non-unit employees performed the same duties as Mr. Monahan while he was doing them, and they continued to perform these same duties after he became a Supervisor of Instruction and subsequently left the District. (N.T. 88-89, 110)

9. Mr. Monahan was in charge of the study guide plans, and he maintained the Community Portal for parental access to students' grades through the Accountability Office. He trained teachers to access the Community Portal and study guide plans and to operate iPad. He worked with the community and parents through the Accountability Office (N.T. 90, 111-112)

10. On or about October 22, 2013, Ms. Mazzella and Ms. Benner prepared the Webmaster job description when Mr. Monahan decided to stop performing Technology Facilitator duties. It was not based on Mr. Monahan's job duties as he had performed them. The Webmaster job description established the expectations of a new position planned for the professional unit. Mr. Monahan was never a Webmaster. (N.T. 81, 101-102; Association Exhibit 2)

11. When Mr. Monahan became a Supervisor of Instruction, the Communications Office wanted to add the Webmaster position with the planned duties outlined in the Webmaster job description but the administration did not approve it. Sometime thereafter, the administration gave permission to the Communications Office to post the MMDS position in the nonprofessional unit. (N.T. 102-103)

12. On November 24, 2014, the District hired Brent Hugo to fill the MMDS position. Mr. Hugo is not a member of the professional bargaining unit. (N.T. 22, 30, 41, 75-76, 106; Association Exhibit 3)

13. Mr. Hugo performs many duties that Mr. Monahan did not perform. Mr. Hugo writes code to change the architecture of the District's website. He developed a website that contains over 20,000 pages. Mr. Monahan was not capable of writing code for web pages. Mr. Hugo works with the community and parents, but he is not involved with the Community Portal, as was Mr. Monahan. Mr. Hugo responds to emails from parents, guardians and students through the District webmaster account. (N.T. 106, 112)

14. Mr. Hugo creates web graphics within the website itself. Mr. Monahan uploaded pre-existing photos and graphics that were provided to him. Mr. Hugo also uploads pre-existing web graphics. (N.T. 114-115, 118)

15. Mr. Monahan's duties as Technology Facilitator were absorbed by other personnel when he became a Supervisor of Instruction. Some duties were assigned to McKinney in the Business Office, and some duties were diverted to the IT Office. None of the people who absorbed Mr. Monahan's Technology Facilitator duties are in the professional bargaining unit. (N.T. 108-109)

16. Mr. Monahan was part of a team of three individuals in the Communications Office who uploaded content to the District's website which contains 20,000-30,000 pages. Ms. Benner, her secretary, Diane Knotec, and Mr. Monahan all performed the same uploading

¹ Mr. Monahan had previously taken the course. (N.T. 91-92).

duties. Ms. Benner's current secretary, Lynn, performs those duties with Ms. Benner now. (N.T. 109-110, 117-118)

17. Since at least 2012, there have been many employees of the District who have had access codes to the website to manage content on specific areas of the District's website. Each school within the District has a web manager who uploads various contents to the District's web pages, such as daily bulletins from his/her particular school. These employees are administrative professionals and secretaries, who are non-unit employees. (N.T. 120-121)

DISCUSSION

The Union argues that the District violated the Act by removing bargaining unit work "when it unilaterally moved the Webmaster position, held by John Monahan, outside of the professional bargaining unit and hired Mr. Brent Hugo, but refused to compensate him pursuant to the professional CBA." (Union's Post-hearing Brief at 4). The Union posits that removing even a small amount of bargaining unit duties to an employee outside the bargaining unit is unlawful. (Union's Post-hearing Brief at 4). The Union further maintains that the "job descriptions for the bargaining unit position of Webmaster, held by John Monahan, and the renamed position of 'Multimedia Developer Specialist,' now held by Brent Hugo, reflect the fact that they are essentially the same position." (Union's Post-hearing Brief at 4). The Union emphasizes that "Ms. Mazzella acknowledged that Mr. Hugo is responsible for at least one of the job duties assigned to Mr. Monahan," and that "the District has admitted that Mr. Monahan and Mr. Hugo have each been responsible for uploading content to the District website. (Union's Post-hearing Brief at 4). Consequently, contends the Union, the District's "admissions support the Association's assertion that the District diverted bargaining unit work by hiring Mr. Hugo to complete bargaining unit work previously assigned to Mr. Monahan." (Union's Post-hearing Brief at 4).

In **Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman Sch. Dist.**, 37 PPER 56 (Final Order, 2006), the Board set forth the appropriate analysis for determining whether a union has met its burden of proving that an employer unlawfully removed bargaining unit work and stated, in relevant part, the following:

The Commonwealth Court has held that "a public employer commits an unfair practice when it transfers **any** bargaining unit work to non-members without first bargaining with the unit." **City of Harrisburg v. PLRB**, 605 A.2d 440 (Pa. Cmwlth. 1992) (emphasis original). In establishing an unfair practice for the removal of bargaining unit work, a union has the burden of proving that the employer unilaterally transferred or assigned work exclusively performed by the bargaining unit to a non-unit employee(s). **City of Allentown v. PLRB**, 851 A.2d 988 (Pa. Cmwlth. 2004). Even where bargaining unit and non-unit employees have both performed similar duties, a union can satisfy the exclusivity requirement by proving that the bargaining unit members exclusively performed an identifiable proportion or quantum of the shared duties such that the bargaining unit members have developed an expectation and interest in retaining that amount of work. **AFSCME, Council 13 v. PLRB**, 616 A.2d 135 (Pa. Cmwlth. 1992); **City of Jeanette v. PLRB**, 890 A.2d 1154, 1159 (Pa. Cmwlth. 2006). Therefore, a public employer commits an unfair practice by altering the manner in which work has been traditionally assigned or by varying "the extent to which members and non-members of the bargaining unit have performed the same work." **Wyoming Valley West Educ. Support Personnel Ass'n v. Wyoming Valley West Sch. Dist.**, 32 PPER ¶ 32008, 28-29 (Final Order, 2000) (citing **AFSCME, supra**).

Lake Lehman, 37 PPER at 179.

The record does not support the Union's argument that the District unilaterally moved the Webmaster position outside the professional bargaining unit. Ms. Mazzella and Ms. Benner became aware of Mr. Monahan's promotion in the fall of 2013. Based on their belief that the District needed an employee with web design, web architecture and web coding skills, which Mr. Monahan did not possess, they developed a new position and

sought to hire someone with those skills. The new position developed by Ms. Mazzella and Ms. Benner was specifically designed to address the shortcomings of Mr. Monahan and to fulfill the District's need for technological duties that Mr. Monahan did not and could not perform. The record demonstrates that, in pursuing this goal, Ms. Mazzella and Ms. Benner created a proposed job description for a future position called "Webmaster" on or about October 22, 2013, approximately 10 days before Mr. Monahan left the Technology Facilitator position to become a Supervisor of Instruction. Ms. Mazzella and Ms. Benner initially planned for the new Webmaster position to be part of the professional unit. However, the Webmaster position never came to fruition and, contrary to the Union's argument, Mr. Monahan was never a Webmaster.

The Union attempted at the hearing to establish that the Webmaster duties were transferred to Mr. Hugo, the MMDS, by comparing the Webmaster job description with the job description of the MMDS. However, the Webmaster position never existed. No one performed the duties as outlined on the proposed Webmaster job description, which merely represented the District's plans for the position. Therefore, the job description comparison was not competent evidence to establish that the duties in the Webmaster job description were performed by a bargaining unit member and then diverted to the non-professional secretarial unit. The record does not establish that Mr. Monahan was a webmaster or that he performed Webmaster duties, such as coding and development and redevelopment of website architecture.

The Union also contends that even a small amount of work performed by the bargaining unit may not be unilaterally diverted, citing **Girard Federation of Teachers v. Girard School District**, 33 PPER ¶ 33167 (Proposed Decision and Order, 2002). The Union emphasizes that the District admitted that Mr. Hugo performs at least one of Mr. Monahan's job duties. In this context, the Union maintains that Mr. Monahan uploaded content to the District website and now Mr. Hugo performs that function. The Board, its hearing examiners and the Commonwealth Court have consistently held that a union has the burden of proving that the bargaining unit employe(s) have **exclusively** performed an identifiable amount of work that was unilaterally diverted. In **Girard**, Hearing Examiner Leonard properly explained, consistent with Board precedent, as follows:

The Board has also held that where the work in question has not been performed **exclusively** by the bargaining unit and where the work at issue does not represent a significant alteration of the duties in the past, there will be no finding of a unilateral transfer of bargaining unit work.

Girard, 33 PPER at 390 (emphasis added). Indeed, Examiner Leonard concluded that the school district in **Girard** engaged in unfair practices by diverting two duties exclusively performed by the district librarian. Examiner Leonard's **Girard** decision, however, is distinguishable because the Union, on this record, did not establish that Mr. Monahan exclusively performed the work that it claims Mr. Hugo is now performing.

Although Mr. Hugo uploads pre-existing photos, graphics and other content given to him by others and Mr. Monahan previously performed those duties, the record shows that many other non-bargaining unit employes had performed the very same duties while Mr. Monahan was performing those duties. In **Girard**, an aide assumed the librarian's exclusive duties of decorating the student resource center and placing books in the display case, upon the retirement of the librarian. Only the librarian performed those two functions prior to her retirement. Unlike the librarian in **Girard**, however, Mr. Monahan was not the only District employe uploading content to the District's website pages and those duties were not exclusively performed by him. Rather, the record is clear that Ms. Benner, her secretaries, the Director of IT and web managers at each school building, who are non-unit employes, all uploaded pre-existing content to various pages on the District's website.

Mr. Monahan spent only 25% of his time performing Technology Facilitator duties and only part of that time uploading content to the website. Numerous non-unit employes collectively performed significantly more uploading than Mr. Monahan, making it impossible to quantify and identify the amount or type of uploading that may have been exclusive to Mr. Monahan. Therefore, the Union did not establish that the District

unlawfully removed an identifiable amount of uploading work **exclusively** performed by Mr. Monahan. Additionally, consistent with **Girard**, "the work at issue does not represent a significant alteration of the duties in the past," Girard, 33 PPER at 390, and a non-speculative remedy is not determinable.

Accordingly, the record does not establish that the District has engaged in unfair practices in violation of Section 1201(a) (1) and (5) of PERA.

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.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighth day of November, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner