

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RIDGWAY AREA TEACHERS ASSOCIATION :
v. : CASE NO. PERA-C-12-307-W
RIDGWAY AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On September 27, 2012, the Ridgway Area Teachers Association (Union or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Ridgway Area 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 changed terms and conditions of employment by adding a requirement to obtain an additional certification to the employment contract of three teachers hired for the 2012-2013 school year.

On October 12, 2012, the Secretary of the Board issued a letter to the Union advising that no complaint would be issued on its charge of unfair practices and explaining that “[a]n employer is not required to bargain over matters of inherent managerial policy, such as the determination of qualifications for a position.” On November 2, 2012, the Union filed exceptions with the Board. On November 27, 2012, the Board issued an Order Directing Remand to Secretary for Further Proceedings. On December 19, 2012, the Secretary of the Board issued a complaint and notice of hearing scheduling a hearing for May 16, 2013, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. Also, during the hearing, the parties jointly submitted a Stipulation of Facts to supplement the hearing record.¹ On July 10, 2013, the Union timely filed its post-hearing brief. On August 16, 2013, the District timely filed its post-hearing brief.

The examiner, based upon the Stipulations of Fact and 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. 3; J.S. ¶1)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3; J.S. ¶1)
3. The student population at the District has declined in recent years. As a result, the District does not need as many full-time teachers. The District does not need a full-time biology teacher because the District only needs to offer biology for three out of eight sections. A teacher with one certification can be hired part-time only because there are insufficient classes to teach one subject for a full day, every day. Part-time teachers will look for employment opportunities elsewhere, and the District will be constantly losing and hiring teachers. The dual certification is good for the District, the students and the teachers. Prior to the 2012-2013 school year, the District advertised for four full-time positions. The advertisement required dual certification or a preference for dual certification for all four positions. The District has been advertising for and hiring teachers with dual certifications for fifteen years. Fifty to seventy percent of the teaching staff possess a dual certification. (N.T. 13-14, 20, 45-46; District Exhibits 1, 7-10)
4. The District hired Brianna Glenn and Ella Spiegel for the 2012-2013 school year. Ms. Spiegel replaced a retiring teacher who held five certifications. Both Ms. Spiegel and Ms. Glenn agreed to obtain dual certifications during their job interviews. Neither employe objected to the requirement of attaining an additional certification. The District would not have hired either Ms. Spiegel or Ms. Glenn had they not given assurances that they would obtain dual certification. (N.T. 11-15, 36-38; J.S. ¶s 3-4)

¹ References and citations to the Stipulations of Fact will be designated as “J.S.” and references to the transcript will be designated as “N.T.”

5. The resolution adopted by the school board to hire Ms. Spiegel stated that she "must attain Secondary Math Certification within one year from date of hire." Ms. Spiegel executed a professional employee contract on June 21, 2012. The contract stated that "it is further agreed the professional employee attain a Secondary Math Certification." (N.T. 17; J.S. ¶ 3; District Exhibit 3)

6. The resolution adopted by the school board to hire Ms. Glenn stated that she "must attain Middle Level Math Certification within one year from date of hire." Ms. Glenn executed a temporary professional employee contract on May 18, 2012. The contract provided that she "agrees to obtain Mid-Level Mathematics certification by start of 2013-2014 School Year." (N.T. 15-16; J.S. ¶4; District Exhibit 2)

7. Ms. Glenn passed the Praxis exam and she is currently certified in Mid-level math. At the time of the hearing, Ms. Spiegel had been studying for the Praxis exam in secondary math. The District reimburses teachers for the costs associated with obtaining and pursuing additional certifications, such as courses and testing fees. (N.T. 18-19)

8. The school board hired Nicholas Irwin effective March 14, 2013. The school board resolution hiring Mr. Irwin stated that his employment was "contingent upon obtaining Mid-Level Math Certification by August 1, 2014." Mr. Irwin agreed to obtain his mid-level math certification at his job interview. As of the date of the hearing, he had not taught math and was scheduled to take the Praxis exam for his mid-level math certification. (N.T. 21, 39; J.S. ¶5)

DISCUSSION

The Union argues that the District must bargain with the Union, as the exclusive certified bargaining representative of the teachers at the District, over wages, hours and terms and conditions of employment. The Union maintains that, although an employer may establish qualifications for employees, the District may not require an employee, once hired, to do something that other members of the bargaining unit are not required to do, i.e., secure additional certifications. (Union's Post-hearing Brief at 7) The Union contends that bargaining is required before the District unilaterally attaches additional terms and conditions of employment on individuals which must be met after they are in fact employed. (Union's Post-hearing Brief at 9).

In this case, the District has determined in its managerial discretion that requiring dual certifications for teachers effectively minimizes the impact on the District, teachers and students resulting from significantly reduced enrollment. The District lacks sufficient students to provide eight classes in each subject. A teacher who is not teaching eight periods is not teaching a full day, and is part-time. A full-time teacher, therefore, must teach more than one subject to teach a full day. This requires a certification in more than one subject. The District's experience is that part-time teachers do not remain at the District. Requiring dual certification allows the District to hire full-time teachers who are more inclined to remain there, which benefits the teachers and the District.

The District has the managerial prerogative to determine how best to effectuate the educational needs of the students by establishing teacher qualifications and promoting teacher longevity. The District has determined that the interests of the teachers, the students and the District are best served by avoiding the potential revolving door of part-time teachers. The dual certification requirement meets those needs.

The Union does not dispute that the District may lawfully establish qualifications. The Union posits that the District may not require new hires to obtain additional qualifications after they were deemed sufficiently qualified to be hired to teach at the District, without bargaining. However, the record does not support the factual premise of the Union's argument. The District did not change qualifications for Glenn, Spiegel or Irwin, or require them to obtain additional qualifications, after they were hired and already deemed qualified for employment. The dual certification was absolutely required at the time of hire and was a condition precedent to being hired.

The District would not have hired these employees but for their promise to fulfill the commitment to the District to meet the standards and qualifications of dual certification set by the District for teaching. The District Superintendent testified that, to be qualified, applicants needed dual certification upon hiring. The District did not modify this qualification or change the standard. It simply gave these three employees,

and others throughout the years, time to comply with the standard. Therefore, the District is within its managerial rights to impose a dual certification requirement on new hires.

Moreover, the Union's claim that Ms. Spiegel was qualified to be hired as a chemistry teacher, Ms. Glenn as a Reading specialist and Mr. Irwin as a biology teacher is not what factually occurred. Ms. Spiegel was hired, not as a chemistry teacher, but as a chemistry and math teacher. She was hired to teach secondary math as much as she was hired to teach chemistry. Similarly, Ms. Glenn was hired to teach both reading and midlevel math. Mr. Irwin likewise was hired to teach both biology and math. All three were hired to teach two subjects, not one, and it was the very reason for hiring them.

The District pays for any and all costs incurred by the teachers to obtain any additional certifications. What occurred here is no different than a public employer, like the Port Authority of Allegheny County, that hires bus drivers without CDLs and pays to train the driver to obtain the CDL.² The necessary qualification **upon hire** is that the employe must possess a CDL to perform his/her job duties. The Port Authority gives new hires time to train and obtain those necessary qualifications. In this case, and in the case of the Port Authority, the qualification was a necessary condition precedent to being hired. The employes met those qualifications subsequent to being hired by fulfilling a promise to obtain the necessary dual certifications, in this case, and the CDL licenses, in the Port Authority case.

In **Service Employees International Union Local 668 v. Commonwealth of Pennsylvania, Department of Military and Veterans Affairs**, 40 PPER 88 (Final Order, 2009), the Commonwealth implemented a new requirement that all new and existing Therapeutic Recreational Service Workers must have or attain a Class C driver's license. The **Commonwealth** case establishes that even changing qualifications after hire is a managerial prerogative.³ The Commonwealth case also refutes the position that the District can change qualifications for all employes but not a select few. In **Commonwealth**, the employer added the requirement of a Class C driver's license to a select group of public employes within the Department of Military and Veterans Affairs. Similarly, in this case, the District saw a need to add the dual certification requirement to new hires to teach both biology and mid-level math, reading and mid-level math and chemistry and secondary math.

Moreover, in **FOP Rose of Sharon Lodge No. 3 v. City of Sharon**, 29 PPER ¶ 29147 (Final Order, 1998), the Board held that a municipal employer's unilateral change in promotion qualifications was a managerial prerogative. In **City of Sharon**, the employer lowered the time-of-service qualification for promotions of police officers from five years of experience as an officer to being in the fifth year of service as a police officer, which effectively increased the candidate pool. The Board stated: "We agree with the City's argument that it need not bargain over a change in the minimum qualifications for a position which has the effect of increasing the pool of applicants who may apply for that position." **City of Sharon**, 29 PPER at 345-346.

Similarly, in this case, the District has the managerial prerogative to set minimum qualifications for hiring new teachers. An employer is entitled to increase or decrease qualification standards to meet the changing needs of its enterprise. In **City of Sharon**, the employer, in its discretion, determined that it needed a larger candidate pool, and it lowered qualifications. In this case, the District, in its discretion, concluded that it needed to increase qualifications by requiring dual certification. These qualification changes met the changing educational needs of the District driven by a significant reduction in student enrollment and insufficient work for a full-time teacher possessing only a single certification.

Accordingly, the District did not have a duty to bargain the imposition of a dual certification qualification for its new hires to meet the changing educational needs of the District and decreases in student enrollment. The dual certification requirement was imposed on new hires at the time of hiring and not, as the Union contends, after being hired. The fact that Ms. Glenn, Ms. Spiegel and Mr. Irwin were permitted to fulfill those requirements within one year of hire, rather than before their hiring date, does not change the fact that the qualifications for dual certification were imposed at the time of hire to be fulfilled and perfected at a later date.

² **In the Matter of the Employes of Port Authority of Allegheny County**, PERA-U-14-267-W.

³ Although the impact of such a change may be subject to bargaining, impact bargaining is not at issue here.

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 ninth day of August, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner