

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLENTOWN EDUCATION ASSOCIATION, PSEA/NEA	:		
	:		
AND	:	CASE Nos.	PERA-C-14-408-E
	:		PERA-C-14-409-E
ALLENTOWN SECRETARIAL EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, PSEA/NEA	:		PERA-C-14-421-E
	:		
v.	:		
	:		
ALLENTOWN CITY SCHOOL DISTRICT	:		

PROPOSED DECISION AND ORDER

On December 19, 2014, the Allentown Education Association (EA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board), at Case No. PERA-C-14-408-E, alleging that the Allentown City School District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act), by diverting the bargaining unit work performed by the Health Services Facilitator from the professional bargaining unit to the Act 93 administrative unit, on or about September 5, 2014. Also on December 19, 2014, the EA filed a charge of unfair practices with the Board, at Case No. PERA-C-14-409-E, alleging that the District violated Section 1201(a)(1) and (5) of PERA, by diverting the bargaining unit work performed by the Arts Facilitator from the professional unit to the Act 93 administrative unit, on or about September 9, 2014.

On December 29, 2014, the Allentown Secretarial Educational Support Personnel Association (ESPA) filed a charge of unfair practices with the Board, at Case No. PERA-C-14-421-E, alleging that the District violated Section 1201(a)(1) and (5) of PERA, by diverting the bargaining unit work performed by the Secretary of Medical Benefits from the non-professional support unit to the Act 93 administrative unit, on or about September 18, 2014.¹

On February 19, 2015, the Secretary of the Board issued a complaint and notice of hearing, in Case No. 409, directing that a hearing be held on July 10, 2015, in Harrisburg. On February 20, 2015, the Secretary of the Board issued complaints and notices of hearing directing that a hearing be held on July 20, 2015 in Case Nos. 408 and 421. I granted several continuance requests and consolidated all three case numbers for hearing purposes. A hearing on the consolidated matters was held on September 16, 2016, during which both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On November 30, 2016, the Union filed its post-hearing brief for all three Case

¹ The EA and the ESPA will collectively be referred to herein as the Union.

Numbers. On January 3, 2017, the District filed its post-hearing brief in the three cases.

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. 8-9)

2. The EA and the ESPA are employee organizations within the meaning of Section 301(3) of PERA. (N.T. 8-9)

3. Christina Mazzella is the Executive Director of Human Resources for the District. (N.T. 142)

4. The Health Services Facilitator position was never actually filled. It was made up in preparation for Bobbie Malcom's retirement. Bobbie Malcolm was the Department Chair of Nurses in the professional bargaining unit until her retirement. Thereafter, the Health Services Facilitator position was converted into an Act 93 administrative position called the Assistant Director for Health Services. The District appointed Kim Zsitek Brannan, effective October 24, 2014, to fill that position. The job descriptions for both positions are virtually identical. The new Act 93 position has the additional authority to supervise bargaining unit employees. The Health Services Facilitator position was created based on what Ms. Malcolm actually did. (N.T. 28-32, 37-38, 48, 74-75, 256-260; Association Exhibits 2, 3, 4, 5)

5. As Assistant Director for Health Services, Ms. Zsitek-Brannan is performing the duties on her job description which include many of the same duties included on the former Health Services Facilitator job description and were actually performed by Ms. Malcolm. Ms. Zsitek-Brannan, in the position of Assistant Director of Health Services, performs duties performed by Ms. Malcolm, who was in the bargaining unit, although Ms. Zsitek-Brannan also performs administrative duties. There are overlaps in duties between Ms. Malcolm and Ms. Zsitek-Brannan. (N.T. 52-56, 263-265; Association Exhibits 6 & 7)

6. As Department Chair of Nurses, Ms. Malcolm guided the responsibilities of school nurses. Nurses reported trends in communicable diseases to Ms. Malcolm, and they still report those trends to Ms. Zsitek-Brannan. Ms. Malcolm provided equipment to and training for the school nurses. She reported communicable disease outbreaks and treatment outcomes to the Department of Health, parents and the student body. Ms. Malcolm also filled absences for health room assistants and worked on the "SHARRS" Report. The SHARRS Report is a 31- page annual nursing report completed by multiple personnel. Ms. Zsitek-Brannan, the new Assistant Director of Health Services, performs these same duties. (N.T. 75-79, 210-213, 215, 221-222, 243-244, 250-251, 273)

7. Ms. Zsitek-Brannan provides professional development and in-service training for nurses, parent and family education and community partnerships with hospitals. Ms. Malcolm also provided in-service training and professional development for nurses. Ms. Zsitek-Brannan coordinates scheduling of nurses with Delta Services when

nurses are sick or unavailable. She obtains money from the Commonwealth for special education students, and she fulfills reporting requirements for the Commonwealth. (N.T. 188-189, 190-192, 245-246, 272)

8. Ms. Zsitek-Brannan assigns nurses to specific buildings and multiple disability students, who are high risk students with multiple disabilities and who may need ventilators and feeding tubes. Ms. Malcolm supervised Dental Hygienists. (N.T. 193-194)

9. Ms. Malcolm, as Department Chair of Nurses, ensured students had their immunizations and excluded students who were not current on their immunizations. Currently, Ms. Zsitek-Brannan, as Assistant Director for Health Services, performs those functions. (N.T. 204-205)

10. Ms. Malcom received requests for oxygen which she distributed upon request. Ms. Zsitek-Brannan currently receives requests for oxygen which she also distributes upon request. (N.T. 244)

11. The position of Arts Facilitator was in the professional bargaining unit and was held by Renee Lorenzetti-Mosser. The position remained vacant for one year when it was converted to an Act 93 administrative position, called Arts Administrator. The District appointed Maryanne Gross to fill that position, effective December 15, 2014, and she is not in the bargaining unit. The entire job description for the new Arts Administrator position is the same as the job description for the Arts Facilitator position, except that an administrative certificate is required of the Arts Administrator. (N.T. 49-52, 55-58, 69-70, 87; Association Exhibits 5, 8)

12. The District developed the Arts Facilitator job description in October 2013 when Ms. Lorenzetti-Mosser left the position. The District initially intended to replace Ms. Lorenzetti-Mosser with someone in the same position. The District posted and interviewed candidates but it could not find anyone it deemed qualified. Dr. Tina Belardi, Assistant Superintendent, recommended making the position a 12-month administrative position. The job description for the Arts Administrator position was prepared on January 7, 2014. (N.T. 88-90, 145, 147-149; Association Exhibit 7)

13. The Arts Facilitator position was modified into the Arts Administrator position and nearly all the duties in both job descriptions are the same. (N.T. 166-169, 173)

14. Much of Ms. Gross's Arts Administrator job duties as contained in the job description of the Arts Administrator, are the same as the duties of the Arts Facilitator as contained in the job description for that position. (N.T. 91-92)

15. In comparing the job duties from the two job descriptions for Arts Administrator and Arts Facilitator, Dr. Belardi testified that Ms. Lorenzetti-Mosser, as Facilitator, and Ms. Gross, as Administrator, both perform the duties contained in job duty number 1 and 2 on both descriptions: i.e., Both "provide [] knowledge and understanding of the PDE Standards Aligned System (SAS), QTEL, Higher Order Thinking, and Formative Assessment." The Administrator has the authority to hold teachers accountable for the knowledge and understanding provided by the Arts Administrator. (N.T. 96-99, 127, 136; Association Exhibits 6 & 7)

16. The Arts Administrator performs all the same duties as the Arts Facilitator with the additional authority to direct teachers, counsel them, change teachers' methods and hold teachers accountable. (N.T. 100-102, 127)

17. As Arts Facilitator, Ms. Lorenzetti-Mosser performed job duty number 3 on the Arts Administrator job description: i.e., she "proposed curriculum projects for Kindergarten through Grade 12," although she primarily focused on elementary grade levels. The Arts Administrator, Ms. Gross, also performs the duties contained in job duty number 3 on the Administrator job description. (N.T. 102, 105-106, 127-128; Association Exhibits 6 & 7)

18. Ms. Gross performs the job duties contained in job duty number 5 on the Administrator job description. Former Arts Facilitator, Ms. Lorenzetti-Mosser, also performed those same duties, although Ms. Gross's scope is broader. (N.T. 107-108)

19. As Arts Facilitator, Ms. Lorenzetti-Mosser was active in trying to get teachers to apply for grants, under job duty number 7 of the Arts Administrator job description. The Arts Administrator, Ms. Gross, also performs those same duties. (N.T. 138)

20. As Arts Facilitator, Ms. Lorenzetti-Mosser performed job duty number 8 on the Arts Administrator job description. The Arts Administrator, Ms. Gross, also performs the duties contained in job duty number 8 on the Administrator job description, although Administrator Gross is more involved with the Community outside of school hours. (N.T. 114-115)

21. As Arts Facilitator, Ms. Lorenzetti-Mosser performed job duty number 11 on the Arts Administrator job description: i.e., she "provided leadership in the organization and management of district and community performances and events for District students." The Arts Administrator, Ms. Gross, also performs the duties contained in job duty number 11 on the Administrator job description, although Administrator Gross performs these duties in a greater capacity. (N.T. 117-121, 131)

22. As Arts Facilitator, Ms. Lorenzetti-Mosser performed job duty number 13 on the Arts Administrator job description: i.e., she participated on a community organization committee with the arts. The Arts Administrator, Ms. Gross, also performs the duties contained in job duty number 13 on the Administrator job description, although Administrator Gross performs these duties in a greater capacity. Ms. Gross participated in a variety of organizations and coordinated with local businesses to display student art work. Both performed the duties in job description number 12 of the Arts Administrator job description. (N.T. 122-124, 136-137)

23. The Secretary for Medical Benefits position was in the nonprofessional support unit. Faye Dannenhower was the Secretary of Medical Benefits until she retired at the end of the school year in 2013. That position was then filled by Tammy Thomas. Ms. Thomas was in the secretarial unit until she was removed, effective July 1, 2014, at the school board meeting of September 18, 2014, and her position was converted to Director of Health Benefits. Jeanette DeLeon currently holds the position. (N.T. 28-32, 34, 286-290; Association Exhibit 2)

24. When Ms. Thomas was in the bargaining unit, and before she was promoted to an administrator, she checked and handled all enrollment for medical and dental benefits. She also did that as an administrator. She handled retiree benefits in both positions. She additionally handled life insurance and life insurance claims in both the administrative and clerical positions. (N.T. 313-315)

25. As Secretary for Medical Benefits, Ms. Thomas prepared packets of documents for COBRA. These packets were sent out under David Elcock's name. Mr. Elcock is a director in the Human Resources Department who reports to Ms. Mazzella. The COBRA forms were returned to Mr. Elcock but forwarded to Ms. Thomas for processing. When Ms. Thomas became an administrator, she still prepared the packets, but they went out under her own name and the included forms were returned directly to her, and she still processed the COBRA materials. As Secretary of Health Benefits, Ms. Thomas collected retiree health checks, copied them and recorded them on a spreadsheet. Ms. Thomas carried over the work from Secretary of Health Benefits to the Director of Health Benefits. (N.T. 316-318, 321-323)

26. Ms. Thomas processed COBRA, enrolled employees in medical and dental benefits, maintained employee information in the medical provider's computer system, processed life insurance forms, billing and death claims, handled workers' compensation claims and medical programs for retirees, all before and after her promotion from her bargaining unit position to her administrative position. (N.T. 322-324)

27. On September 17, 2014, Ms. Mazzella emailed the Union attaching the old and new job descriptions for several positions that were changed. The email indicated that the Arts Facilitator became the Arts Administrator; the Health Services Facilitator became the Assistant Director for Health Services; and the Secretary for Medical Benefits became the Benefits Administrator. (Association Exhibit 1)

DISCUSSION

In Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman Sch. Dist., 37 PPER 56 (Final Order, 2006), the Board stated 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 employe(s). City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). Even where bargaining unit and non-unit employes 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.

In this case, the Union met its burden of proving with substantial, competent evidence that the District removed bargaining unit work when it converted bargaining unit positions to administrative positions and those administrators subsequently performed many of the same duties as the predecessor bargaining unit position holder. The fact that the administrators have additional administrative and supervisory duties does not negate the fact that they are also doing the work historically and exclusively performed by the professional and nonprofessional/secretarial bargaining units at the District.

The District presented a lot of evidence supporting its need to make these positions administrative. The District also claims that the administrative nature of the positions changed the duties and responsibilities such that the administrative positions did not resemble the bargaining unit positions. However, the Union is not contesting whether the new positions should be administrative and is not seeking to clarify the two bargaining units who lost the work to include those administrative positions. Also, the record does not support the District's position that the added administrative duties changed the nature and character of the administrative positions so dramatically that the duties were vastly different. Those administrators continue to perform many duties formerly done by bargaining unit personnel. Even where the Board clarifies a position out of a bargaining unit, the employer must bargain any bargaining unit work the employer seeks to assign to the excluded position. Accordingly, the District must bargain over the work that was removed from the two bargaining units in these cases and diverted to the newly created administrative positions.

The District also argues that, in Case Nos. 408 and 409, the EA only alleged that the District "unilaterally listed the positions of Health Services Facilitator and Arts Facilitator as Act 93 position, thereby removing work from the professional employees' bargaining unit." (District's Post-hearing Brief at 5). The District argues that the Union misidentified the positions posted and the mere listing does not constitute a removal of work. (District's Post-hearing Brief at 5-6). However, the thrust of both charges is not the listing or the proper identity of the professional positions, rather the EA representative clearly alleged in both charges: "In concise form, the District has engaged in the subcontracting of bargaining unit work." (Specification of Charges; PERA-C-14-408-E; PERA-C-14-409-E).

Both charges, at Case Nos. 408 and 409, were filed on December 19, 2014, which is after Ms. Zsitek-Brannan effectively started her duties as the Assistant Director of Health Services, on October 24, 2014, and after Ms. Gross effectively started her duties as Arts

Administrator, on December 15, 2014. Accordingly, the charges complaining of the removal of bargaining unit work were filed after the District removed the work, and the EA proved that the District did indeed remove bargaining unit work.²

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 Allentown Education Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Allentown Secretarial Education Support Personnel Association is an employe organization within the meaning of Section 301(3) of PERA.
4. The Board has jurisdiction over the parties hereto.
5. The District has committed unfair practices within the meaning of Section 1201(a)(1) and (5) of PERA in Case Nos. PERA-C-14-408-E; PERA-C-14-409-E; and PERA-C-14-421-E.

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 Allentown Education Association and the Allentown Secretarial Education Support Personnel Association which are the exclusive representatives of employes in the respective appropriate units herein involved, including but not limited to discussing of grievances with the exclusive representatives.
3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

² Charge No. 421 was filed on December 29, 2014, similarly stating that "[i]n concise form, the District has engaged in the subcontracting of bargaining unit work." (Specification of Charges; PERA-C-14-421-E). Tammy Thomas effectively started her administrative duties on July 1, 2014, but the ESPA had no way of knowing until the September 18, 2014 school board meeting. Accordingly, the ESPA, in this charge, also properly placed the District on notice that it was complaining about the removal of bargaining unit work that had already been removed, and the ESPA proved those allegations.

(a) Exclusive of administrative and supervisory duties, immediately return the work performed by the Assistant Director of Health Services to the professional bargaining unit represented by the Education Association under Case No. 408, restore the status quo ante, and make whole any bargaining unit employees who have been adversely affected due to the District's unfair practices;

(b) Exclusive of administrative and supervisory duties, immediately return the work performed by the Arts Administrator to the professional bargaining unit represented by the Education Association under Case No. 409, restore the status quo ante, and make whole any bargaining unit employees who have been adversely affected due to the District's unfair practices;

(c) Exclusive of administrative and supervisory duties, immediately return the work performed by the Director of Health Benefits to the nonprofessional, secretarial bargaining unit represented by the Allentown Secretarial Education Support Personnel Association under Case No. 421, restore the status quo ante, and make whole any bargaining unit employees who have been adversely affected due to the District's unfair practices;

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

(e) 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

(f) Serve a copy of the attached Affidavit of Compliance upon the EA and the ESPA Unions.

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 twelfth day of February, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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v.	:		
	:		
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AFFIDAVIT OF COMPLIANCE

Allentown City 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 by immediately returning all bargaining unit work to the bargaining units represented by the Allentown Education Association and the Allentown Secretarial Education Support Personnel Association, restoring the status quo ante, and making whole any bargaining unit employes who have been adversely affected due to the District's unfair practices; 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