

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SAYRE AREA EDUCATION ASSOCIATION :
:
:
v. : CASE NO. PERA-C-20-285-E
:
SAYRE AREA SCHOOL DISTRICT :
:

PROPOSED DECISION AND ORDER

On November 25, 2020, Sayre Area Education Association (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Sayre Area School District (District or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by unilaterally diverting bargaining-unit work.

On January 22, 2021, the Secretary of the Board issued a complaint and notice of hearing designating March 22, 2021, via Microsoft TEAMS, as the time and manner of hearing.

The hearing was continued and held on April 23, 2021, via Microsoft TEAMS before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed its post-hearing brief on July 16, 2021. The District filed its post-hearing brief on August 13, 2021.

The Hearing 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 Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8-9).

3. Since approximately 2014, the District has contracted with a private third-party company Source4Teachers for substitute teachers. (Source4Teachers is also known as ESS.) When a full-time bargaining-unit teacher would need a substitute for a day, he or she would request a substitute via phone or an online system. The District then, through its contract with Source4Teachers, would provide a substitute teacher on a day-to-day basis. The District still uses Source4Teachers to staff periodic absences and day-to-day substitute teachers. The day-to-day substitutes are not bargaining-unit employes. (N.T. 21-26, 31-32, 56, 67, 103; District Exhibit 22).

4. In addition to day-to-day substitutes, the District also uses building based substitutes employed by Source4Teachers. Unlike a day-to-day substitute, a building-based substitute reports to a specific building every day and receives instruction from the building

principal as to what they would be doing that day. A building-based substitute spends the entire day in the building and is not sent home. Building substitutes will cover classes like a day-to-day substitute, but also do other work when no day-to-day substitutes are needed. Building based substitutes do other work such as covering a lunch duty or assisting classes as a paraprofessional support. Building based substitutes are paid by Source4Teachers. (N.T. 26-27, 48-50, 59-60, 67, 88-90).

5. On August 15, 2019, the parties had a meeting about the upcoming school year. On August 17, 2019, Association Vice President Paul Stropko sent an email to Superintendent Jill Daloisio which summarized the main points of discussion of this meeting. This email states in relevant part:

2. SUB shortage - ideas to help problem: a) free lunch for subs, b) attention to IEP scheduling/dates, c) payment for coverages, d) incentivizing staff (perfect attendance, etc.), e) existing contract language (increasing payment for unused sick days at retirement, or at end of each year), f) increasing sub pay, g) **building based subs (led to discussion of District's duty to employ, TPE status for these subs)**. . . .

(N.T. 38-39; District Exhibit 37) (emphasis added).

6. In the 2019-2020 school year, Association President William Trump and Stropko noticed that full-time building substitutes from Source4Teachers were at District buildings very frequently. Stropko noticed the building-based substitutes starting in August 2019. The Association began to investigate, but then the District closed in March, 2020, due to Covid-19, which meant the Source4Teachers substitute teachers were no longer employed. Thus, due to Covid-19, the District stopped using building-based substitutes after March, 2020 and began again in the beginning of the 2020-2021 school. (N.T. 22-25, 35-36, 44-45, 60-61, 135, 154, 158).

7. On August 26, 2020, Trump received an email from the high school secretary which states in relevant part:

Good afternoon everyone!

We are going to have Building Based Subs again this year. Can you please indicate on this sheet if there might be any periods that you might like to have extra help should a sub not have an assignment.

Thank you and have a GREAT night!

(N.T. 27-28; Association Exhibit 2).

8. On August 31, 2020, Stuart Karschner, the Association UniServ representative, sent an email to Daloisio. This email states in relevant part:

Dear Jill,

The local has recently learned that the District is employing full-time building substitutes. We are requesting you supply us with the following information:

1. How many building substitutes have been hired in each building.
2. The terms and conditions of their employment . . .
3. The name of each building substitute.

(N.T. 29; Association Exhibit 3).

9. In the beginning of the 2020-2021 school year, Stropko again noted that the District was using building substitutes. He noticed four building substitutes reported to his building on the first day of the school year. (N.T. 25).

10. Courtney Paris is employed by Source4Teachers. She was employed during the 2019-20 school year until the COVID-19 shut down, and then signed a new contract with the company for the 2020-2021 school year as a building-based sub. Since January 5, 2021, Paris had been assigned as a long-term substitute in a second-grade classroom, where she performed duties of a teacher, including drafting lesson plans, communicating with parents, and working on Individualized Educational Plans for special education students. Paris is covering for a bargaining unit member teacher who, at the time of the hearing, was on sabbatical from January, 2021, through June, 2021. The District has no plans to employ Paris as a long-term substitute beyond the 2020-2021 school year. (N.T. 48-61, 152-153).

11. Kaitlyn Hawthorne is also employed by Source4Teachers. She started as a full-time building-based substitute and was given a long-term assignment on January 8, 2021. At the time of the hearing, Hawthorne was acting as the Arts and Gifted teacher. She drafts lesson plans, participates in Individualized Educational Plans, and collaborates with families and colleagues. She also participated in staff meetings and remote work on Google Meet. Hawthorne is covering for a bargaining unit member teacher who was, at the time of the hearing, out on leave pursuant to the Family and Medical Leave Act which was scheduled to expire at the end of June, 2021. The District has no plans to employ Hawthorn as a long-term substitute beyond the 2020-2021 school year. (N.T. at 63-72, 152-153).

12. The Association's unit description is all full-time classroom teachers, librarians, nurses, guidance counselors, department heads, and psychologists/psychologist counselors; and excluding special education coordinator, building principals-elementary, guidance director, athletic director, all non-professional employes, supervisors, first level supervisors, and confidential employes as defined in the Act. (PERA-R-179-C, PERA-U-7743-C, PERA-U-10-325-E).

13. Historically, the District has always used non bargaining unit members as substitute teachers. (N.T. 131).

DISCUSSION

In its Charge, the Association alleges that the District committed an unfair practice by diverting bargaining unit work by using building-based substitutes through Source4Teachers, a third-party contractor.

During the hearing, the District moved for judgment in its favor based on the fact that the Association's charge was time barred. (N.T. 95). I deferred ruling on the District's motion. Section 1505 of PERA provides that no charge shall be entertained which relates to acts which occurred or statements which 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 complainant has the burden to show that the charge was filed within four months of the occurrence of the alleged unfair practice. PLRB v. Commonwealth of Pennsylvania (Bureau of Employment Security), 9 PPER ¶ 9171 (Nisi Decision and Order, 1978); PLRB v. Allegheny County Prison Employees Independent Union, 11 PPER ¶ 11282 (Proposed Decision and Order, 1980).

The charge in this matter was filed on November 25, 2020. It is clear from the record that the Association knew or should have known that an unfair practice was committed by the District in August, 2019. The record shows that in August, 2019, the Association and the District discussed the District's use of building based substitutes. Additionally, in the 2019-2020 school year, which started in August 2019, the Association noticed that full-time building-based substitutes from Source4Teachers were at District buildings very frequently. These actions by the District form the basis of the Association's charge and occurred well outside of the four-month period of time counting backwards from November 25, 2020. Therefore, the Association's charge is barred pursuant to Section 1505 of PERA. I do not find that the District's Covid-19 shutdown in March, 2020, relieved the Association's statutory requirement to timely file a charge.

Even if the Association in this matter had timely filed, they would not have won on the merits of the charge. 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 analysis for removal of bargaining unit work is a refined and focused factual inquiry into whether the public employer transferred 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). In this matter I find that, even if the Association had filed timely, it could not have prevailed as the record does not support a conclusion that the building-based substitutes were performing work that was exclusive to the bargaining unit. The record shows that the building-based substitutes were performing as substitute

teachers and also fulfilling paraprofessional duties when not acting as a substitute teachers. The Association did not carry its burden of showing on the record exactly what specific work exclusive to the bargaining unit was transferred by the District. The record shows that the District has always used non bargaining unit members as substitute teachers.

In addition, the record does not support a conclusion that the District transferred any work in the form of increasing the amount of work done by the building-based substitutes. The Association has the burden of showing what exclusive bargaining unit work was transferred by the District. As discussed above, the record does not support a conclusion that the building-based substitutes were performing exclusive bargaining unit work.

The Association brought up in its case the situations of Courtney Paris and Kaitlyn Hawthorn. Paris and Hawthorn are Source4Teachers employees who work at the District. Since January 5, 2021, Courtney Paris has been a long-term substitute in a second-grade classroom. Since January 8, 2021, Kaitlyn Hawthorn has worked as a long-term substitute art and gifted teacher at the District. Previous to being long-term substitutes, both were building based substitutes at the District. The District argues in its Brief:

The Association places much of its case on testimony of long-term substitutes, Ms. Paris and Ms. Hawthorne, neither of whom were currently working as a building-based substitute. N.T. 43. In doing so, the Association is attempting to blur the distinction between "building based" substitutes and "long term" substitutes . . . The Association's post hoc attempt to divert the focus from "building based" substitutes to "long term" substitutes is an impermissible and untimely attempt to amend the Association's original Charge and should be rejected.

(District's Brief at 14-15). I agree. When Hawthorne and Paris were placed as long-term substitutes, they were not working as building based substitutes and therefore not properly part of the Charge which is explicitly limited to building based substitutes and not amended to include the long-term substitutes. The Charge was filed **before** Hawthorne and Paris were placed as long-term substitutes and the Charge was not amended. Their placement by the District is outside the scope of the Charge. Lawrence County, 12 PPER ¶ 12312 (Final Order, 1981) (holding that a charging party is limited to the presentation of evidence as to the specific allegations contained in a charge as timely amended.) Even if I were to find that the Charge could be read to properly include the placement of Hawthorne and Paris as long-term substitutes as an alleged unfair practice, the Charge was filed out of the statutory time limits, as discussed above.

And, finally, even if I were to address the merits of the argument made by the Association with respect to Hawthorne and Paris, I would find that the record does not show that the work of being a long-term substitute teacher was exclusive to the bargaining unit. As with building-based substitutes discussed above, the Association did not

carry its burden of showing on the record exactly what specific work exclusive to the bargaining unit was transferred by the District. The record shows that the District has always used non bargaining unit members as substitute teachers.

CONCLUSIONS

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

1. The 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 charge was not timely filed within the four-month limitation period prescribed in Section 1505 of PERA.

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 rescinded.

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 at Harrisburg, Pennsylvania, this fifteenth day of September, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner